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LEGISLATIVE REPORT
OF THE
Mental Health Study Commission
FOR THE
North Carolina
General Assembly
1977 Session



LEGISLATIVE REPORT
OF THE MENTAL HEALTH STUDY COMMISSION
FOR THE
1977 GENERAL ASSEMBLY

Mental Health Study Commission

March 1977

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I. Background of Mental Health Study Commission

The Mental Health Study Commission was established by the North Carolina General Assembly in May, 1973, "to study and evaluate the existing system of delivery of State health care for mental illness, mental retardation, alcoholism and related health problems and to recommend an improved system for the delivery of such care to meet the short and long term needs of the citizens of North Carolina." The Study Commission submitted its initial report and recommendations in March, 1974.

Since the initial report, the Study Commission has emphasized the review of administrative and program policies of the Division of Mental Health Services. In May, 1975, the General Assembly ratified a bill to extend the Study Commission with its original powers and duties as "necessary to continue the original study, assist in the implementation of the original Study Commission recommendations and plan further activity on the subject of the study."

As a result of these three years of work, the Study Commission has now focused attention on legislative changes which affect the delivery of mental health care. The direction of the recent work of the Study Commission is reflected in this report.

In October, 1976, the Mental Health Study Commission adopted a plan to facilitate its study of proposed mental health issues which might be brought before the 1977 General Assembly. The plan was enacted as follows:

A special meeting of the Study Commission was held on November 4, 1976, to secure information from citizens and organizations interested in mental health in North Carolina. On that date, thirty-four speakers appeared before the Study Commission in a day-long meeting.*

* Appendix B, "Presentations Before the Mental Health Study Commission, November 4, 1976," is a list of speakers and the organizations and agencies represented at the special meeting.

During November and December, 1976, three subcommittees of the Study Commission held meetings to study proposed legislative issues. Those committees were:

- A. Subcommittee on proposals for revision of area mental health laws: Senator Harold W. Hardison, Chairman.
- B. Subcommittee on proposals for creation of new Division of Mental Retardation and for creation of new Division of Alcohol and Drugs: Senator John W. Winters, Sr., Chairman
- C. Subcommittee on other potential legislative issues: Representative Chris Barker, Jr., and Senator Ollie Harris, Co-Chairmen.

During December, 1976, and January and February, 1977, proposals from the subcommittees and relevant issues were studied by the full Commission. The final recommendations of the Mental Health Study Commission are reflected in this report.

II. Narrative Discussion of Mental Health Issues

A. Issues for Which Legislative Drafts Have Been Prepared by the Mental Health Study Commission

1. Area Mental Health Programs

Current Law - Present community mental health law permits a county, a municipality with a population in excess of 25,000, or any independent community agency to be designated as a local mental health authority. One or more counties or portions of one or more counties can be designated under another option by the Commission for Mental Health Services as an area mental health program. Counties selecting to be members of an area program must appoint a citizen area board, with county commissioners serving on the area board. Ninety-five of the State's counties are now part of an area program. Counties not choosing to participate in an area program may designate a local mental health authority, but non-participation causes

some loss of State finances and may cause some counties not utilizing a citizen governing board to be ineligible for federal funds.

Proposed Law - This bill requires all counties to participate in an area mental health program. County commissioners would appoint a citizen governing board as the area mental health authority, and the area board would then serve at the pleasure of the county commissioners. Several other changes are made which correspond to new federal law such as requiring a fee for service when an individual can afford to pay and prohibiting employees of the area board from using the resources and facilities of the area mental health authority when engaging in private practice.*

Title of Proposed Law - AN ACT TO REWRITE PORTIONS OF CHAPTER 122 OF THE GENERAL STATUTES OF NORTH CAROLINA DEALING WITH AREA MENTAL HEALTH PROGRAMS AND TO REPEAL ARTICLES 2A, 2C, AND 2E OF CHAPTER 122. (Appendix A-1)

2. Confidentiality of the Court Records of Minors Voluntarily Admitted to a Mental Health Treatment Facility

Current Law - There is no current law directly affecting this subject.

Proposed Law - This bill provides that the district court record made during the voluntary admission of a minor to a mental health treatment facility will be confidential. Access to such information is provided by a court order only. When the individual reaches age 18, such court record would be expunged.

* Appendix C, "Rationale for Area Mental Health Revisions," includes further information.

Title of Proposed Law - AN ACT TO AMEND ARTICLE 4 OF CHAPTER 122 OF THE GENERAL STATUTES TO PROTECT THE PRIVACY OF MINORS VOLUNTARILY ADMITTED TO A TREATMENT FACILITY BY MAKING THE COURT RECORD OF ADMISSION CONFIDENTIAL. (Appendix A-2)

3. Modification of the State Mental Health Council

Current Law - Present law establishes a Mental Health Advisory Council in North Carolina. It was written before new federal guidelines set the criteria for the composition of citizens advisory boards.

Proposed Law - This bill would permit the expansion of the membership of the Council to allow the federal criteria to be met for the purpose of receipt of federal funds in North Carolina.

Title of Proposed Law - AN ACT TO AMEND G.S. 143B-182 AND G.S. 143B-183 TO MODIFY THE STATE MENTAL HEALTH COUNCIL FOR THE PURPOSE OF MEETING REQUIREMENTS SET BY FEDERAL AUTHORITIES AS A CONDITION TO RECEIVING FEDERAL AID. (Appendix A-3)

4. Prescription of Standards for the Delivery of Mental Health Service to Prison Inmates in the Custody of the Department of Correction

Current Law - There is no present State law dealing with this subject.

Proposed Law - This bill designates the Commission for Mental Health Services as the authority to set standards for the delivery of mental health services to prison inmates. The Department of Human Resources would monitor the implementation of such standards and report on the progress made to the Governor and the General Assembly. The bill reflects a request from the Division of Prisons of the Department of Correction to the Commission and has been favorably reviewed by the Division of Mental Health Services, Department of Human Resources.

Title of Proposed Law - AN ACT TO AMEND G.S. 148-19 TO DIRECT THE COMMISSION FOR MENTAL HEALTH SERVICES TO PRESCRIBE STANDARDS FOR THE DELIVERY OF MENTAL HEALTH SERVICES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION. (Appendix A-4)

5. Allowance for Increased Cooperation Between the Department of Correction and Other Public and Private Agencies in Order to Improve the Delivery of Mental Health Services to Inmates of the Department of Correction

Current Law - The Department of Correction is now prohibited from contracting with the Division of Mental Health Services for the provision of mental health services to inmates.

Proposed Law - This bill repeals the anti-contract provision mentioned above and would allow increased cooperation between the Department of Correction and the Division of Mental Health Services. The bill would require payment for services which might be provided through contracts between the Department of Correction and the Division of Mental Health Services. Both agencies have reviewed the bill and there is agreement it would permit increased cooperation.

Title of Proposed Law - AN ACT TO AMEND G.S. 148-22(b) TO ALLOW FOR INCREASED COOPERATION BETWEEN THE DEPARTMENT OF CORRECTION AND OTHER PUBLIC AND PRIVATE AGENCIES IN ORDER TO IMPROVE THE DELIVERY OF MENTAL HEALTH SERVICES TO INMATES OF THE DEPARTMENT OF CORRECTION. (Appendix A-5)

6. Involuntary Commitment of Persons Who Are Mentally Retarded and, Because of an Accompanying Behavior Disorder, Are Imminently Dangerous to Others

Current Law - Only those persons who are mentally ill or inebriate and who are imminently dangerous to themselves or others are committable to mental health facilities under present law.

Proposed Law - This bill would expand the present criteria for involuntary commitment to mental health treatment facilities to include mentally retarded individuals who, because of an accompanying behavior disorder, are imminently dangerous to others. The need for this bill was brought to the attention of the Commission by a district court judge. Mental retardation specialists in the Division of Mental Health Services also contributed to the study of the issue.

Title of Proposed Law - AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 TO PROVIDE FOR THE INVOLUNTARY COMMITMENT OF PERSONS WHO ARE MENTALLY RETARDED AND, BECAUSE OF AN ACCOMPANYING BEHAVIOR DISORDER, ARE IMMINENTLY DANGEROUS TO OTHERS. (Appendix A-6)

7. Extension of the Mental Health Study Commission

Current Law - The present Mental Health Study Commission will cease to exist on July 1, 1977. The Commission presently consists of eleven members, six from the General Assembly and five appointed by the Governor. The Commission was established to study, evaluate, and make legislative recommendations in order to improve the delivery of mental health care services to the citizens of North Carolina.

Proposed Law - The Mental Health Study Commission would be extended until July 1, 1979. The number of members on the Commission would be increased from eleven to fifteen. Two of the new members would be North Carolina county commissioners appointed by the Governor; the other two new members would be members of the General Assembly.

Title of Proposed Law - AN ACT TO EXTEND THE MENTAL HEALTH STUDY COMMISSION. (Appendix A-7)

8. Provision of Legal Representation for the Petitioner in Involuntary Commitment Proceedings

Present Law - The district attorney may represent the petitioner in cases of significant public interest.

Proposed Law - This bill would require the district attorney to represent the petitioner's interest at involuntary commitment proceedings held in district court. If the district attorney "does not have the staff to meet these responsibilities or if he believes it to be an inappropriate duty" then provision is made for the appointment by the Administrative Office of the Courts of supplemental private counsel to perform these duties on a part-time basis.

Title of Proposed Law - AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 OF THE GENERAL STATUTES TO PROVIDE LEGAL REPRESENTATION FOR THE INTERESTS OF THE PETITIONER IN INVOLUNTARY COMMITMENT PROCEEDINGS BY THE DISTRICT ATTORNEY OR A PRIVATE ATTORNEY APPOINTED BY THE ADMINISTRATIVE OFFICE OF THE COURT. (Appendix A-8)

9. Notification of Hearings and Rehearings to the Petitioner in Involuntary Commitment Proceedings

Current Law - There is no present State law dealing with this subject.

Proposed Law - This bill requires the clerk of court to notify the petitioner at least 48 hours in advance of all hearings and rehearings in which the district court judge might determine to release the respondent from the psychiatric institution.

Title of Proposed Law - AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 TO PROVIDE ADVANCE NOTICE OF HEARINGS AND REHEARINGS TO THE PETITIONER IN INVOLUNTARY COMMITMENT PROCEEDINGS.

(Appendix A-9)

B. Issues Examined for Which the Mental Health Study Commission Did Not Draft Legislation

1. Resolution that the Drug and Alcohol Section of the Division of Mental Health Services in the Department of Human Resources Become the Single Substance Abuse Agency of North Carolina

In examination of this resolution which arose from the Outerbanks X Conference held by United Health Services of Durham, North Carolina, in October, 1976, many speakers appeared before the appropriate subcommittee of the Commission. Present law gives the Department of Human Resources the responsibility to establish community-based programs for the treatment and prevention of drug abuse (G.S. 122-35.24) and the responsibility in the area of alcoholism to study, evaluate and coordinate treatment programs, public understanding and recognition, educational programs, research and evaluation, training programs, and need for new State laws and programs (G.S. 122-109). Under present law the Drug Commission in the Department of Administration is designated as the single State agency to coordinate all State efforts relating to drug abuse prevention, education, control, treatment, and rehabilitation (G.S. 143B-377).

It was the Commission's decision to recommend no changes in the present structure of State government related to alcohol and drug abuse services as described above.

2. Right of Patients in Psychiatric Facilities to Volunteer to Work

A problem concerning the right of patients to volunteer to work in psychiatric institutions was raised by the Director of the Advocates Program in North Carolina. Federal regulations made pursuant to the Fair Labor Standards Act as amended in 1974 required that mental patients be paid a minimum wage for their volunteered services. The Director of the Advocates Program (a program designed to protect the rights of mental patients) stated that carefully supervised work could be highly therapeutic and that the minimum wage requirement essentially prohibited this activity. Research by the Mental Health Study Commission staff revealed a recent United States Supreme Court case, National League of Cities v. Usery (June 24, 1976), which held that the minimum wage and overtime provisions of the Fair Labor Standards Act did not apply to employees working for the State. As a result of that decision, the federal minimum wage

requirement now does not apply to the voluntary work performed by mental patients among others. It should also be noted that institutionalized mental patients are exempted from State minimum wage requirements. Thus, patients can participate in volunteer work activities without payment of a minimum wage.

C. Issues Examined by the Mental Health Study Commission for Which Legislation may be Considered at a Future Time

1. Proposed Creation of a New Division of Mental Retardation

During November, 1976, the Commission held a series of meetings on the issue of a need for a Division of Mental Retardation separate from the Division of Mental Health Services. After hearing many presentations, for and against separation, the Study Commission requested that the Secretary of Human Resources report to the Mental Health Study Commission by March 1, 1977, recommendations for dealing with this issue. This request was made of the Secretary in recognition of the Secretary's authority and responsibility under the Executive Reorganization Act of 1973 to create divisions within the Department. Among the problem areas for the delivery of mental retardation services which were brought before the Commission were the following:

- a. Authority as it relates to the assurance of quality and quantity of services,
- b. Continuity of services including coordination needed for deinstitutionalization,
- c. Stability of resources for community services provided by private non-profit organizations,
- d. Assistance and resources for development of programs,
- e. Representation on area mental health boards,

- f. Accessibility to services,
- g. Visibility for mental retardation, a disability different from mental illness,
- h. Communications,
- i. Lack of State plan for local programs,
- j. Mental retardation experts in line authority positions.

Additional materials on the pros and cons of this issue may be secured from Commission staff members, Richard Surles, Angie McMillan, or Ed McClearen, 733-5668.

2. Mental Illness and Criminal Procedure

a. Test for criminal responsibility

North Carolina presently uses the M'Naghten Test as its standard for criminal responsibility. In the M'Naghten Test "to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong." The Mental Health Study Commission is in the process of studying a proposal that would substitute the Model Penal Code as the standard for criminal responsibility for the present rule. The Model Penal Code provides that "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

b. Not guilty by reason of insanity

The Mental Health Study Commission is presently studying a proposal to provide more control over persons found not guilty of crimes by reason of insanity. Accompanying this proposal is a request to repeal G.S. 122-83 and G.S. 122-84 as they were supposedly inadvertently left in the law by the 1974 Session of the General Assembly.

3. Insurance for Outpatient Mental Health Services

The Mental Health Study Commission is continuing to investigate the issue of provision of insurance benefits for outpatient mental health treatment. Several states, including Minnesota and California, have new laws which make such insurance available; the Commission is studying those laws and the possible effect of a similar law in North Carolina.

4. Emergency Psychiatric Care for Youthful Offenders

The Division of Youth Services has identified the following problem areas in providing mental health care for children served by the Division of Youth Services:

- a. No place to house and treat extremely destructive children,
- b. Inadequate psychiatric care and emergency back-up care,
- c. Difficulty in identifying resources for alternative placement as well as difficulty in implementing alternative models because of community and administrative constraints,
- d. Difficulty in effective interagency agreements for support services to clients of the Division of Youth Services,
- e. Need to secure adequate inservice training for staff to meet needs of severely destructive children,
- f. Inability to establish guardianship provisions for adjudicated youth.

Staff of the Study Commission have been directed to address these problems; additional study and consultation with appropriate State agencies may result in the consideration of legislative drafts by the Commission.

5. Alternative Service Programs for Disturbed Children and Youth

The Commission, in recognition of the need for additional and alternative services for emotionally disturbed children and youth, is investigating the therapeutic wilderness camping program established by the Jack and Ruth Eckerd Foundation in Florida. This particular program has demonstrated effectiveness at a reasonable cost of care and treatment per child. Therapeutic wilderness camping uses the challenge of living in the wilderness where survival is dependent upon working cooperatively in a group and where feelings of self-worth are increased by learning to master the environment to assist youth in developing pride, self-esteem, and self-discipline.

D. Summaries of Legislative Proposals Affecting Mental Health From Sponsors Other Than the Mental Health Study Commission

1. Summary and Analysis of Report on Limited Guardianship Task Force on Limited Guardianship Recommended by the North Carolina Developmental Disabilities Council*

Purpose of Proposed Revision: (1) to provide for limited guardianships, since many disabled persons are hardly ever completely disabled; (2) to set forth the duties and responsibilities of guardians to their wards, other than financial responsibilities, since those duties are not now enumerated in the law; and (3) to provide for due process in the guardianship hearings since due process is not now required by the statute.

* Abbreviated version of a summary prepared by staff at the Institute of Government, Chapel Hill, N. C.

Who May Have a Guardian: Any adult who is impaired to the extent that he lacks sufficient capacity to make or communicate important decisions about his person, family, or property may have a guardian appointed for him. The mentally ill, mentally retarded, cerebral palsied, epileptic, autistic, or otherwise mentally or neurologically impaired adult is eligible to have a guardian. Because they cannot, to the degree nonhandicapped people can, make or communicate decisions to safeguard themselves and others, they deserve a guardian. But because they usually are able to function in a limited way, the guardian should not have complete control over them. Children are not covered by the proposed revision. Handicapped children for whom guardians have been appointed can be furnished guardians under the proposed law after reaching their majority. Nor does the proposed revision affect the law providing emergency guardianship for disabled, abused or neglected adults (Ch. 797, 1975 S.L.).

Effect of new law, if adopted: If the General Assembly enacts the proposed limited guardianship law, the following changes will occur:

- a. The perjorative terms of the present law will be removed (e.g., "idiot, imbecile, feeble-minded, insane").
- b. Procedural due process will be required. Present law is under attack in State and federal courts on the ground it is unconstitutional because it does not provide for right to counsel.
- c. The duties of a guardian to his ward (as distinguished from his ward's estate) will be spelled out for the first time in North Carolina. Under current law, they are not stated in the statute and the common law does not say what they are.
- d. The ward's rights will not be unnecessarily restricted because his guardian's powers will be limited according to his (the ward's) needs.
- e. The search for guardians will be made easier since corporations and public agents may be appointed as guardians if there are no suitable individuals.

- f. The issue of who may consent on behalf of a handicapped person to various kinds of medical or other treatment will be answered without having to strip the person of all of his rights, as is now required under State law.
- g. Through the multi-disciplinary evaluation, physicians will receive the assistance of other professionals trained in the evaluation and habilitation of disabled persons, with the result that the ward may receive necessary services and his guardianship will more precisely fit his needs.
- h. Clerks of court will be required to appoint guardians if a person is adjudged to be impaired. Some now refuse to do so.
- i. The power of the superintendents of the state hospitals and centers to declare a patient incompetent may no longer be used since a better procedure will exist; the power of the superintendents to issue the certificate without a hearing most likely is unconstitutional and would be removed.

2. Summary of the Legislation Recommended by the Attorney General's Committee on Public Drunkenness*

Repeal of the public drunkenness offense. Effective January 1, 1978, the offense of public drunkenness, G.S. 14-335, would be repealed, along with the present statutes on officers' assistance to drunks and the defense of alcoholism. Local governments would be forbidden to enact ordinances punishing simple public drunkenness.

Handling the public drunk. There would be two procedures for taking a public drunk off the street. If he were simply drunk and not disruptive, a police officer could assist him home, to another's house, to a shelter if he needed care other than medical, and to a mental health center, hospital, doctor's office or other medical facility if he needed immediate medical attention. If taken to a shelter or medical facility approved by the Department

* Prepared by Attorney General's Committee of Public Drunkenness.

of Human Resources, the drunk could be kept there until he become sober or a maximum of 12 hours. If he wanted to stay longer he could, and if there were probable cause to consider him an alcoholic a clerk or magistrate could order him held for up to 72 hours for a district court appearance.

If the drunk were disruptive--which would be defined as interfering with traffic, blocking a sidewalk, fighting, begging and so forth--he would be subject to arrest for a new \$50/30-day misdemeanor of drunk and disruptive. A person arrested for that offense would not be allowed to plead guilty before a magistrate but would have to appear before a district court judge. It would be a complete defense to the charge that the person was an alcoholic, and a presumption that such was the case would arise from a showing that he had been found drunk in public three or more times in the last year. If the person were found to be an alcoholic the district court judge could then determine whether he needed to be ordered into treatment for 30 days, or could have the person come back to court within 15 days for that decision to be made.

Officer's liability. Although there is virtually no authoritative case law on the question, it is the opinion of national organizations that have made recommendations for repealing the drunkenness offense that a police officer can be given authority to assist a person without arresting him if the person is so intoxicated that he cannot take care of himself. This is the position of the National Conference of Commissioners on Uniform State Laws and of the thirty or so states that have recently repealed their drunkenness offenses. A section specifying that the officer is not liable is included in this legislation and officers are also protected by the retention of a criminal offense and the arrest power for the drunk who is unruly. In addition, local governments are authorized to hire others to assist nondisruptive public drunks if they want to lift that burden from the police.

Use of the jail. Some local governments will not have a shelter facility for public drunks by the time this legislation goes into effect. As a safety valve it is provided that for one year after the effective date--that is, until January 1, 1979--the non-disruptive drunk may be taken to the local jail if he needs care but does not need medical attention, and there is no other place nearby likely to take him in. The drunk will not be under arrest and may be kept in the jail only until he becomes sober, or a maximum of 12 hours. He can be released to a relative or friend at any time.

Thirty-day treatment. An alleged alcoholic may be brought before a district court judge one of two ways to determine if he needs treatment for up to 30 days. He may have been found not guilty of being drunk and disruptive because of his alcoholism, or he may have been assisted while intoxicated in public. There is no provision for going out to get the person who previously was drunk in public but was released and has not been publicly drunk since.

The district court judge is to determine whether the person is an alcoholic in need of care, defined as an alcoholic who has lost control to the extent that he regularly has to depend on others for food, clothing, shelter, medical or other essential care. A rebuttable presumption that a person is an alcoholic in need of care arises from his appearance drunk in public (whether disruptive or not) three times within the last 12 months. If the district court judge finds the person to be an alcoholic in need of care he can refer him to an alcoholism program or he can order him to participate in one for up to 30 days. The program could be either out-patient or inpatient. These provisions are supplementary to the present involuntary commitment laws.

This use of objective criteria for determining the need for care is something new. Such an objective standard might not be possible for other alcoholics but it is available for those who are now being arrested for public drunkenness. The repetitive

appearance drunk in public clearly indicates an alcohol problem, and defining the need for care this way gives judicial officials a clear standard to administer. It is more protective of the alcoholic's rights than existing standards in that there is a clear test of alcoholism rather than a physician's prediction of the need for care and "imminent danger."

Longer treatment. For the derelict alcoholic who does not respond to treatment and continues to become publicly drunk, provision is made for longer commitment. Again, this is supplementary to present commitment law. If a district court judge finds that a person is an alcoholic in need of care (as defined earlier) and that he has been given recent opportunities for treatment and has not participated or has not responded, the judge may order the person committed to a residential facility for up to 180 days. The alcoholic would come before the judge only after being arrested for being drunk and disruptive or after being assisted for being drunk in public. A presumption of the need for this commitment would arise from one of two circumstances: (1) appearing drunk in public (whether disruptive or not) after having been ordered into 30-day treatments three or more times in the last three years; of (2) appearing drunk in public after having been committed once as an inebriate under present law and having been ordered into 30-day treatment twice within the last three years.

Bail. The legislation would also amend present statutes to specify that a person's intoxication and need for supervision is to be taken into account by the magistrate or other releasing official in determining what conditions to impose on a criminal defendant's pretrial release.

New facilities, financing. The legislation does not state what new facilities are to be established. Local governments are best qualified to decide what kind of facilities are needed to replace jails for initial care of the derelict alcoholic. In most instances, simple, inexpensive shelter facilities with medical help on call

should be sufficient. Hospitals can be used for medical emergencies. Some localities may desire more elaborate detoxification centers. Two substantial sources for this purpose are already available. The price of each bottle sold in an ABC store has a nickel added to it to go to the county commissioners for alcoholism programs. Also, each local ABC board, unless exempted by local act of the General Assembly, is to spend not less than seven percent of its profits on alcoholism programs. If these and other local funds are not sufficient, consideration could be given to changing the nickel per bottle add-on to a graduated scale (such as a nickel on a pint, a dime on a fifth, fifteen cents on a quart, etc.) and to requiring each local ABC board to spend the seven percent (about half are now exempted). In the event this is found to be desirable, a separate bill to so provide has been drafted by the Committee.

Funding of any new long-term residential care facilities would probably be the responsibility of the State, but experience with the new law is needed to see what is necessary in that regard.

3. Summary of Public Drunkenness Bill Recommended by Commission of Correction*

The draft bill submitted to the Commission would repeal the criminal offense of public drunkenness (G.S. 14-335) effective July 1, 1977, but would authorize law enforcement officers to take protective custody of those intoxicated in public. Also repealed would be the statute on being drunk and disorderly (G.S. 14-334, a vague statute superseded by the more specific disorderly conduct provisions of G.S. 14-288.4) the section now authorizing the officer to take actions other than arrest of a public drunk (G.S. 14-335.1, superseded by this bill), and the article of G.S. Ch. 122 allowing an affirmative defense of alcoholism to a charge of public drunkenness (G.S. 122-65.6 through - 65.9, not now used because of the possibility of two

* Summary prepared by Staff to the Commission of Correction

years' commitment, and superseded by this legislation). No city or county could enact an ordinance to punish simple public drunkenness.

The actions the officer could take with regard to the public drunk would depend on the person's condition. For those not in need of food, shelter or medical care, a trip home or to a friend's house would be permissible. For those in need of food or shelter, but not medical care, the trip could be a shelter facility (which could be simple in construction and budget). If medical care were necessary, the officer could take the drunk to a hospital or doctor or other medical facility (including a detoxification center if it had medical coverage). In none of these cases should the officer have to do anything other than sign whatever simple form is required by the facility; none of the paperwork of an arrest should be necessary. Shelter and medical facilities would have to be approved by the Department of Human Resources.

If the drunk were taken to a shelter or medical facility, he could be detained there against his will only until he became sober or a maximum of 24 hours. If he wished to stay voluntarily after that he could. Any involuntary detention after the initial sobering period would have to be under the authority of the present civil commitment statutes, which are not affected by this legislation other than by the provisions to allow the drunk to be taken off the street.

If a city or county wished to provide greater relief for its police officers, it could employ persons other than police for the protective custody function. All officers handling public drunks would be specifically exempted from civil liability.

For the first year after enactment of the legislation, a city or county could use the jail to keep custody of the public drunk if no other facility were readily available. He still would not be charged with a crime. On July 1, 1978, the authority for use of the jail would cease. For the first year, the jail could only be

used if the drunk were in need of food or shelter and not in need of medical care. Also, the stay in jail would be limited to 12 hours rather than 24, but the drunk could be released to a relative or friend at any time.

4. Summary and Analysis of Proposed Legislation Concerning ABC "Nickel-Per Bottle" and "Seven-Percent-of-Profits" Funds Recommended by Alcohol Advisory Council*

The N. C. Alcohol Advisory Council has recommended legislation concerning the use of ABC nickel-per-bottle and seven-percent-of-profits funds. The most important changes that would be made in present law by the proposed legislation are as follows: (1) all local ABC boards would be required to provide seven percent of profits for alcoholism programs; (2) expenditure of both nickel-per-bottle and seven-percent funds would be under the control of the county commissioners; (3) the stated purpose for which expenditure could be made would be broadly stated and would be the same for both nickel-per-bottle and seven-percent funds; (4) the funds would have to be spent with the advice of the area mental health board and subject to regulation of the Commisison on Mental Health Services; (5) the funds would have to be placed in a special account by the county commissioners, an annual audit of that account would be required, and quarterly and annual reports to the Division of Mental Health Services would be required; (6) funds not spent for alcoholism would remit to the State Treasurer for use by the Division of Mental Health Services; (7) the changes with regard to nickel-per-bottle would take place July 1, 1977; the changes with regard to seven-percent funds would take place a year later so that local agencies currently receiving some of that money would have sufficient time to make other arrangements for funding.

The Advisory Council's legislative committee has not consulted with representatives of either the ABC boards or boards of county

*Rewrite of the report prepared by the Alcohol Advisory Council

commissioners, but have stated their belief that such consultation is necessary before the legislation is presented to the General Assembly.

APPENDIX A

LEGISLATIVE RECOMMENDATIONS
OF THE
MENTAL HEALTH STUDY COMMISSION

INTRODUCED BY:

Referred to:

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2

3

4

A BILL TO BE ENTITLED

5

6

AN ACT TO REWRITE PORTIONS OF CHAPTER 122 OF THE GENERAL STATUTES OF

7

NORTH CAROLINA DEALING WITH AREA MENTAL HEALTH PROGRAMS AND TO REPEAL

8

ARTICLES 2A, 2C, AND 2E OF CHAPTER 122.

9

The General Assembly of North Carolina enacts:

10

Section 1. A new article is added to Chapter 122 of the

11

General Statutes of North Carolina to read as follows:

12

"Article 2F

13

"Area Mental Health Programs

14

15

"Part 1.

16

"Policy Statement; Definitions

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"Section 122-35.35. Declaration of Policy.--Providing

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community mental health services of the highest possible quality within

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available resources is an obligation of Government in North Carolina to

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its citizens. The furnishing of such services requires the cooperation

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and financial assistance of county, State, and federal governments.

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"In order to provide comprehensive mental health services to

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all citizens at a reasonable cost, the area mental health authority shall

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make every reasonable effort to collect appropriate reimbursement for

1 its cost in providing such services based upon the ability of the person
2 to pay except where prohibited by policy or law; however, no one shall
3 be refused mental health services because of an inability to pay.

4 "To insure accountability where such services are rendered,
5 the governing board of the area mental health program shall be selected
6 by the county commissioners in the area where such services are to be
7 administered.

8 "Section 122-35.36. Definitions. -- For the purposes of this
9 Article, the following definitions shall apply:

10 (1) "Area mental health authority" -- the governing unit authorized
11 by the Commission for Mental Health Services and delegated the
12 authority to serve as the comprehensive planning, budgeting,
13 implementing, and monitoring group for community-based mental
14 health, mental retardation, and substance abuse programs. An
15 area mental health authority is a local political subdivision
16 of the State.

17 (2) "Area mental health board"-- a group of persons appointed by
18 the county commissioners pursuant to the provisions of this
19 Article to serve as the governing body of the area mental
20 health programs.

21 (3) "Area mental health facility" -- a mental health facility,
22 public or private, established to serve the needs of a
23 designated area program in mental health, mental retardation,
24 or substance abuse.

25 (4) "Catchment area" -- a population base sufficient to secure
26 federal funding under existing federal legislation as they
27 apply to mental health services.

28 (5) "Commission for mental health services" -- a citizen board

- 1 designated by State statute to set minimum standards for
2 the operation of State and area mental health, mental
3 retardation, and substance abuse programs.
- 4 (6) "Department of Human Resources" -- the unit of State
5 government authorized to implement, administer, and monitor
6 community-based programs in cooperation with local governmental
7 authorities; such unit is hereinafter referred to as Department.
- 8 (7) "Medical doctor" -- a person licensed to practice medicine in
9 North Carolina, including a doctor of medicine specializing
10 in the field of psychiatry.
- 11 (8) "Mental health programs" -- sets of activities designed to
12 meet the service needs of citizens. Mental health program
13 or mental health programs refers to programs of general
14 mental health, mental illness, mental retardation, substance
15 abuse, and related fields.
- 16 (9) "Minimum standards" -- specifications of the required basic
17 level of activity and required basic levels of human and
18 technical resources necessary for the implementation and
19 operation of mental health programs. Minimum standards are
20 set by the Commission for Mental Health Services in all areas
21 of mental health not otherwise specified in State statutes and
22 such standards shall be administered by the Department of
23 Human Resources.
- 24 (10) "Operating costs" -- expenditures made by an area mental health
25 program in the delivery of community mental health services in
26 the areas of general mental health, mental illness, mental
27 retardation, and substance abuse. Such operating costs shall
28 include the employment of legal counsel on a temporary basis

1 to represent the interest of the area mental health program.

2 (11) "Qualified professional" -- any person with appropriate
3 training or experience in the professional fields of mental
4 health care, mental illness, mental retardation, or substance
5 abuse, including but not limited to medical doctors,
6 psychiatrists, psychologists, social workers, and registered
7 nurses.

8 (12) "Substance abuse" -- self-abusive use of substances, including,
9 but not limited to, alcoholism and drug abuse.

10

11 "Part 2.

12 "Authorization of Area Mental Health Services

13 "Section 122-35.37. Mental Health Services. -- The Department
14 of Human Resources is directed to establish community-based programs of
15 mental health services within catchment areas specified by the
16 Commission for Mental Health Services. The provision of services shall
17 be a joint undertaking of the Department and the area mental health
18 authority. The mental health services programs shall be developed by
19 coordinating resources, personnel, and facilities of the area mental
20 health authorities and of the Department of Human Resources, pursuant
21 to this Article. Mental health services shall include, but not be
22 limited to, programs for (1) general mental health, mental disorder,
23 and mental health education; (2) mental retardation; and (3) substance
24 abuse. Such mental health service programs shall include, but need
25 not be limited to, treatment and preventive services.

26 "Section 122-35.38. Designation of Department of Human Resources
27 as the State Mental Health Authority. -- The Department of Human Resources
28 is hereby designated as the State mental health authority for purposes

1 of administering federal funds allotted to North Carolina and State
2 funds allotted to the Department pertaining to mental health activities.
3 The Department of Human Resources is further designated as the State
4 agency authorized to administer minimum standards and requirements for
5 mental health services as conditions for participation in federal-State
6 financial aid, and is authorized to promote and develop community mental
7 health services in accordance with the provisions of this Chapter. The
8 Department of Human Resources shall be responsible for administering
9 minimum standards for area mental health programs.

10 "Nothing in this Chapter shall be construed to prohibit the
11 operation of mental health service programs by the Department of Human
12 Resources at any of the institutions under the control of the Department
13 of Human Resources, or the operation of mental health service programs
14 at the North Carolina Memorial Hospital in Chapel Hill, or at any other
15 hospital or facility acceptable to the Department of Human Resources.

16 "Section 122-35.39. Designation of local governmental units
17 to specify responsible area mental health authority. -- (a) An area
18 mental health authority, with approval of the Department of Human
19 Resources and the Commission for Mental Health Services shall be
20 established by (1) the board of county commissioners or (2) jointly
21 by two or more boards of county commissioners.

22 "(b) The unit shall be known as an area mental health authority.
23 County commissioners shall appoint an area mental health board who shall
24 thereafter serve at the pleasure of the county commissioners by whom
25 such appointments were made. The area mental health board thus
26 appointed shall be the area mental health authority for the purposes
27 of this Article.

28 "Section 122-35.40. Structure of area mental health board. --

1 (a) The area mental health board shall meet at least six times per
2 year and shall consist of 15 members. However, the number of board
3 members may be increased up to 25 for the purpose of meeting requirements
4 set by federal authorities as a condition to receiving federal aid.
5 Meetings shall be called by the area board chairman or by three or more
6 members of the board after notifying the area board chairman in writing.

7 "(b) The area mental health board shall include:

- 8 (1) at least one commissioner from each county in the area;
- 9 (2) at least two persons duly licensed to practice medicine
10 in North Carolina;
- 11 (3) at least one representative from the professional field
12 of psychology, or social work, or nursing, or religion;
- 13 (4) at least three representatives from local citizen
14 organizations to include one each from those active in
15 areas of substance abuse, mental health, and mental
16 retardation;
- 17 (5) at least one representative from local hospitals or area
18 planning organizations;
- 19 (6) at least one attorney practicing in North Carolina.

20 "(c) Any member of an area mental health board who is a county
21 commissioner shall be deemed to be serving on the board in an ex officio
22 capacity to his public office. The terms of such members shall be
23 concurrent with their respective terms as public officials. The
24 terms of the other members on the area board shall be for four years,
25 except that upon the initial formation of an area mental health board,
26 one-fourth shall be appointed for one year, one-fourth for two years,
27 one-fourth for three years, and all remaining members for four years.
28 However, nothing contained herein shall prevent the county commissioners

1 from replacing board members at any time pursuant to G.S. 122-35.39.

2 "(d) Any vacancy occurring on an area board prior to the expiration
3 of the appointed term of office shall be filled by the commissioners
4 from the county of residence of the former board member and such
5 appointment shall be for the remainder of the unexpired term of office.
6 Such appointee shall meet the same requirements under subsection (b)
7 of this section as was required of the former board member.

8 "(e) In areas consisting of more than one county, each board
9 of county commissioners within the area shall appoint one commissioner
10 as a member of the area mental health board. These members shall appoint
11 the other members of the board in such manner as to provide equitable
12 area-wide representation.

13 "Section 122-35.41. Designation of the Commission for Mental
14 Health Services. -- Standards for services not covered under the provision
15 of this Article may be prescribed by the Commission for Mental Health
16 Services. All community-based mental health, mental retardation, and
17 substance abuse programs must meet or exceed minimum standards and no
18 other standards shall apply unless specifically established in State
19 or federal statutes or regulations. Failure to comply with the established
20 standards shall be grounds for the Department of Human Resources to
21 cease participating in the funding of the particular community-based
22 program. An area mental health authority may appeal for exceptions to
23 the minimum standards to the Commission for Mental Health Services based
24 upon catchment area needs. Such appeal shall be made pursuant to the
25 procedures set forth in G.S. 122-35.52.

26

27 "Part 3.

28 "Responsibilities of Area Mental Health Authorities

1 "Section 122-35.42. Appropriate local funds. -- County and
2 municipal authorities are authorized to appropriate funds for the support
3 of mental health programs which serve the catchment area regardless of
4 whether the service programs are physically located within the boundaries
5 of a single county or whether any facility housing a service program
6 is owned and operated by the local governmental units. Counties are
7 authorized to make appropriations for the purposes of this Article
8 and to fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22)
9 and G.S. 160A-209 and by the allocation of other revenues whose use is
10 not restricted by law.

11 "Section 122-35.43. Submit application for service program. --
12 (a) Subject to the standards of the Commission for Mental Health
13 Services, the area mental health authorities shall review and evaluate
14 the area needs and programs in general mental health, mental illness,
15 mental retardation, substance abuse, and related fields, and shall develop
16 with the Department of Human Resources an annual plan for the use,
17 control, and development of State, regional, and area facilities and
18 resources in order to provide a comprehensive program of mental health
19 services for the area residents.

20 "(b) The annual plan of work shall include an inventory of existing
21 services, services to be provided during the next fiscal year, and
22 projected services during the following year, including, but not limited
23 to, service plans for the mentally ill, mentally retarded, and substance
24 abuser. The annual plan shall indicate the expenditure of all State,
25 local, and federal funds for each service according to the source of
26 the fund. The annual plan of each area authority shall include a plan
27 for contracting with the State mental hospital, center for the mentally
28 retarded, and alcoholic rehabilitation center where such facilities are

1 available. Before State funds are provided to area mental health
2 authorities, such annual plans and subsequent changes shall be subject
3 to approval by the Department of Human Resources.

4 "Section 122-35.44. Report to the Department and county
5 commissioners. -- (a) On a periodic basis, specified by the Department
6 of Human Resources, each area mental health authority shall provide the
7 Department of Human Resources and county commissioners with:

8 (1) A budget report which indicates receipt and expenditure
9 for the total area mental health program according to a
10 reporting format prescribed by the Department;

11 (2) An audit report prepared by an independent certified public
12 accounting firm.

13 "(b) The Department of Human Resources can require reports of
14 activities and services of the area mental health authority but such
15 reports shall not identify names of individual clients of the local
16 mental health programs unless specifically required by State statute
17 or federal rules and regulations.

18 "(c) Beginning on July 1, 1977, and at least biannually thereafter,
19 reports required of the area programs by the Department shall be reviewed
20 by the Department of Human Resources and only those reports deemed
21 necessary by the Department shall thereafter be required.

22 "(d) The Department may delay payments and with written notifi-
23 cation of cause may reduce or deny payment of funds if an area mental
24 health authority fails to file required reports within the time limit
25 set by the Department.

26 "Section 122-35.45. Personnel. -- (a) Technical and Professional
27 Standards -- Subject to the standards of the Commission for Mental Health
28 Services, the area mental health authority shall establish technical

1 and professional standards which must be approved by the Department of
2 Human Resources.

3 "(b) Area mental health program employees -- Employees under
4 the direct supervision of the area mental health authority are area
5 program employees and for the purpose of personnel administration,
6 Chapter 126 shall apply unless otherwise provided in this Article.

7 "(c) Appointment of area mental health director -- The area
8 board shall appoint, with the approval of the Department of Human
9 Resources and the county commissioners within the catchment area, an
10 area mental health director. The area mental health director shall be
11 the employee of the area board and shall serve at the pleasure of the
12 area board. The director shall be responsible for the appointment of
13 staff, for implementation of the policies and programs of the board,
14 compliance with standards of the Commission for Mental Health Services,
15 and for the supervision of all staff and service programs.

16 "(d) Supervision of services -- Unless otherwise specified,
17 services shall be the responsibility of a qualified professional with
18 approved training and experience acceptable to the Department of Human
19 Resources as prescribed by regulations of the Commission for Mental
20 Health Services. Direct medical and psychiatric services shall be
21 provided by a duly qualified psychiatrist or an individual duly
22 licensed by the State of North Carolina as a medical doctor with
23 adequate training and experience acceptable to the Department of Human
24 Resources.

25 "Section 122-35.46. Salary plans for area mental health
26 program employees. -- A salary plan for area mental health employees
27 shall be set by the area mental health authority. In a multiple-
28 county area, such salary plan shall not exceed the highest paying

1 salary plan of any county in that area. In a single-county area,
2 such salary plan shall not exceed the county's salary plan. The
3 salary plan limitations set forth in this section may be exceeded
4 only if the area mental health authority and the board or boards
5 of county commissioners, as the case may be, jointly agree to exceed
6 these limitations.

7 "Section 122-35.47. Require fee for service. -- The area
8 mental health authority shall make every reasonable effort to collect
9 appropriate reimbursement for its costs in providing mental health
10 services to persons able to pay for service, including insurance or
11 third-party payments. However, no one shall be refused mental health
12 services because of an inability to pay. The area mental health
13 authority will prepare a schedule of fees for its services designed
14 to cover the reasonable costs of providing such services. All funds
15 collected from fees shall be utilized for the fiscal operation or
16 capital improvement for the area mental health service program and
17 shall not reduce or replace the budgeted commitment of local tax
18 revenue.

19 "Section 122-35.48. Limitation of professional reimbursement. --
20 Area mental health authorities will adopt and enforce a policy (i) under
21 which fees for the provision of services directly under the supervision
22 of the area authority will be paid to the area program; (ii) under
23 which employees of the area authority are prohibited from providing
24 such services on a private basis which requires the use of the resources
25 and facilities of the area authority, and (iii) under which employees
26 may accept dual compensation and dual employment with a written
27 permission of the area mental health authority.

28 "Section 122-35.49. Contract for services. -- The area mental

1 health authority may contract with other public or private agencies,
2 institutions, or resources for the provision of services, but it shall
3 be the responsibility of the area mental health authority to insure
4 that such contracted services meet the rules and regulations as set by
5 the Commission for Mental Health Services. Terms of the contract shall
6 require the area mental health authority to monitor the contract to assure
7 that minimum standards are met.

8 "Section 122-35.50. Appeal by area mental health authority. --
9 The area mental health authority may appeal to the Commission for Mental
10 Health Services any departmental action which affects its program or
11 plan for services.

12 "Section 122-35.51. Licensing required. -- An area mental health
13 facility operated under the provisions of Chapter 122 of the General
14 Statutes shall obtain a license permitting such operation. Subject to
15 standards governing the operation and licensing of these facilities
16 set by the Commission for Mental Health Services, the Department of
17 Human Resources shall be responsible for issuing licenses.

18 "Section 122-35.52. Appeal from the denial or revocation of
19 a license. -- An area mental health facility whose license is revoked
20 or whose license application is denied by the Department shall first
21 be given 60 days written notice specifying the grounds for such revocation
22 or denial. The area mental health authority is entitled, by written
23 request to the Commission within the 60 day period of notification, to
24 a hearing before the Commission for Mental Health Services. The hearing
25 shall be held within 20 days of the written request and shall be open
26 to the public. The decision of the Commission shall be made within
27 10 days after such hearing. Any area mental health facility whose
28 license is revoked shall be allowed to continue to operate until the

1 appeal provided by this section is concluded.

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3 "Part 4.

4 "Appropriation for Mental Health Service Programs

5 "Section 122-35.53. Allocation of all funds to area mental
6 health authorities.--All State appropriations shall be allocated to area
7 mental health authorities in accordance with the annual plan and budget
8 adopted by the area mental health authority and approved by the Depart-
9 ment of Human Resources. The final share of State funds will be
10 allocated on the basis of actual expenses and reported in a manner pre-
11 scribed by the Department. Unexpended State appropriations will be
12 remitted to the Department of Human Resources within 120 days after the
13 close of the fiscal year.

14 Unless specified by the Department of Human Resources, State appro-
15 priations to area mental health programs shall be used exclusively for
16 the operating costs of the programs. All real property shall be provided
17 by local or federal funds. Equipment necessary for the operation of such
18 programs shall be provided by local, State, federal, or donated funds
19 or any combination thereof. Title to such real property shall be held
20 by the county where such property is located and title to equipment
21 shall be held by the area mental health authority. All community mental
22 health, mental retardation, and substance abuse funds shall be expended
23 in accordance with rules and regulations of the Department of Human
24 Resources and in accordance with the minimum standards set by the
25 Commission for Mental Health Services. Failure to comply with rules,
26 regulations, and minimum standards may be grounds for the Department
27 of Human Resources to cease participation in the funding of the particular
28 mental health program. The Department may withdraw funds from a

1 specific program of services not being administered in accordance with an
2 approved plan and budget after written notice and subject to an appeal
3 in accordance with G.S. 122-35.52

4 "Section 122-35.54. Allocation of funds to area programs.--

5 Subject to the provisions of this Act, appropriations shall be made
6 annually by the Department of Human Resources to area mental health
7 authorities for the provision of community based service programs.

8 Such allocations shall be made in the form of a base grant computed on
9 the basis of five hundred dollars (\$500.00) per 1,000 population within
10 the catchment area. Additional allocations may be made to the area
11 mental health authorities on the conditions and formula basis as
12 provided in this part.

13 "Section 122-35.55. Allocation of State matching funds to local

14 mental health authorities.--State appropriated matching funds shall be
15 distributed subject to an adopted regulation of the Department which sets
16 a formula based upon the county's relative fiscal capacity to fund mental
17 health services. Such regulations shall be reviewed bi-annually by the
18 Department. Area mental health funds used for matching State funds may
19 include, but not be limited to, fees from services, fees from agencies
20 under contract, gifts and donations, and county and municipal funds.

21 For the purpose of this section, area financial participation used to
22 match State allocations shall not include State or federal mental health
23 funds.

24 "Section 122-35.56. Direct grants for services.--In addition

25 to the matching grants provided elsewhere in this Act, the Department
26 shall make direct grants to area mental health authorities from special
27 State and federal funds appropriated for special programs. Such grants
28 shall be for the treatment of persons by community facilities rather

1 than in regional institutions and shall be administered as provided by
2 G.S. 122-35.53 and G.S. 122-35.55.

3 "Section 122-35.57. Responsibilities of those receiving State
4 and federally administered appropriation.--All resources appropriated
5 and received by any area mental health authority and used for programs
6 of mental health, mental retardation, substance abuse or other related
7 mental health fields are subject to the condition specified in all
8 parts of this Act and to the standards of the Commission for Mental
9 Health Services."

10 "Sec. 2. This Act shall become effective July 1, 1977."

11 "Sec. 3. Articles 2A, 2C, and 2E of Chapter 122 are repealed
12 effective July 1, 1977."

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§ 122-34 CH. 122. HOSPITALS FOR THE MENTALLY DISORDERED § 122-35.1

that hospital, center or school, in their presence, and within the grounds of their hospital, center or school, and carry the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1.)

Editor's Note. — The first 1973 amendment substituted, in the second sentence, "a magistrate, who may issue a warrant and proceed as in other criminal cases before him" for "some justice of the peace for trial" and deleted the former third sentence, relating to the issuance of a warrant by the justice.

The second 1973 amendment substituted "administrator of each mental hospital and each residential center for the mentally retarded" for "superintendent or business manager of each hospital and training school"

and "centers, or school" for "or schools" in the first sentence, inserted "center" near the end of the first sentence and in two places in the second sentence, substituted "a magistrate who shall proceed as in other criminal cases" for "some justice of the peace for trial" at the end of the second sentence and deleted the former third sentence, which was also deleted by the first 1973 amendment.

The section is set out above as it appears in the second 1973 amendatory act.

§ 122-34. Oath of special policemen. — Before exercising the duties of a special policeman, the employees appointed, as in the preceding section [G.S. 122-33], shall take an oath of office before some officer empowered to administer oaths, and the same shall be filed with the records of the Department of Human Resources. The oath of office shall be as follows:

State of North Carolina, County.

I,, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the State hospital at, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this day of, A. D. (1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C. S., s. 6182; 1963, c. 1166, s. 11; 1973, c. 108, s. 74; c. 476, s. 133.)

Editor's Note. — The first 1973 amendment deleted "justice of the peace of the county, or other" preceding "officer" in the first sentence.

"Department of Human Resources" for "State Department of Mental Health."

Cited in *State v. Propst*, 274 N.C. 62 161 S.E.2d 560 (1968).

§ 122-35. Volunteer firemen among employees rewarded. — The Department of Human Resources shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the Department may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the State Firemen's Relief Fund. (1899, c. 1, s. 59; Rev., s. 4571; 1917, c. 150, s. 1; C. S., s. 6183; 1963, c. 1166, s. 11; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment for "State Department of Mental Health" and substituted "Department of Human Resources" "Department" for "Board."

ARTICLE 2A.

Local Mental Health Clinics.

§ 122-35.1. Designation of Department of Human Resources as State's mental health authority; outpatient mental health clinics; support of local mental health clinics authorized. — The Department of Human Resources is hereby designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina under the provisions of

§ 122-35.2 CH. 122. HOSPITALS FOR THE MENTALLY DISORDERED § 122-35.3

the National Mental Health Act and similar federal legislation pertaining to mental health activities. The Department of Human Resources is further designated as the State agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal-State grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the provisions of this Chapter: Provided, that nothing in this Chapter shall be construed to prohibit the operation of outpatient mental health clinics by the Department of Human Resources at any of the institutions under the control of the Department of Human Resources, or the operation of an outpatient mental health clinic at the North Carolina Memorial Hospital in Chapel Hill or at any other hospital acceptable to the Department of Human Resources.

It shall be the policy of the Department of Human Resources to promote the establishment of mental health clinics in those localities which have shown a readiness to contribute to the financial support of such clinics, assisted by the federal and State grants-in-aid to the extent available.

The governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of mental health clinics which serve such localities whether or not the facilities of the clinic are physically located within the boundaries of such municipalities or counties, and whether or not such clinics are owned and operated by the local governmental units. Each county and municipality is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153-65 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1963, c. 1166, s. 6; 1973, c. 476, s. 133; c. 803, s. 35.)

Editor's Note. — Former § 122-35.1 was redesignated by Session Laws 1963, c. 1166, s. 2, as § 122-36. Section 6 of the 1963 act added Article 2A, including present § 122-35.1, to this Chapter. See Editor's note to § 122-36.

The first 1973 amendment substituted "Department of Human Resources" for "State Department of Mental Health."

The second 1973 amendment substituted

"municipalities" for "cities, towns" in the first sentence of the third paragraph, deleted, at the end of that sentence, "and such support or partial support is hereby declared to be a necessary expense within the meaning of Article VII, § 7 of the North Carolina Constitution" and rewrote the second sentence of the third paragraph.

§ 122-35.2. Development of community mental health services. — Child-guidance clinics, adult clinics, all-purpose clinics (i.e., clinics serving both children and adults), and aftercare treatment clinics, and a statewide program of mental health education are to be developed and administered by the Department of Human Resources. The Department is designed to augment, promote, and improve, if necessary, the expansion of already existing services in general hospitals or clinics that help to conserve the mental health of the people of North Carolina. The Department will also encourage, implement, and provide assistance for research into various aspects of mental health by the local clinics. (1963, c. 1166, s. 6; 1965, c. 929, s. 2; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.3. Joint State and community operations of mental health clinics. — The Department of Human Resources is authorized to establish community mental health services within a framework of policies which provide for the joint operation of mental health clinics within local communities which agree to participate financially and otherwise in the program. This is to be a joint arrangement in which the Department of Human Resources represents the State of North Carolina and a local mental health authority represents the community. The Department of Human Resources is authorized to maintain standards for local mental health clinics, to advise

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agencies interested in community mental health, and cooperate with other local health services. (1963, c. 1166, s. 6; 1965, c. 929, s. 3; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.4. Local mental health authorities. — Local mental health services, when approved by the Department of Human Resources, may be established by (i) any board of county commissioners, (ii) any governing body of a municipality with a population in excess of 25,000 or (iii) any independent community agency interested in mental health. The governmental unit or agency establishing the local mental health service shall be known as a "local mental health authority." The local mental health authority may establish or designate an advisory board. (1963, c. 1166, s. 6; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.5. Joint county and city mental health services. — Joint mental health services may be established by: (i) two or more counties, (ii) a combination of two or more cities with a combined population in excess of 25,000 or (iii) a combination of one or more cities with one or more counties.

Joint mental health services may be jointly operated, or one participating city or county may contract to provide said services for any other city or county. The costs of joint services are to be apportioned among the participating units on the basis of the population of each participating unit. The local governmental units establishing the joint mental health services shall be known as the "local mental health authority." (1963, c. 1166, s. 6.)

§ 122-35.6. Establishment of local mental health clinics; establishment and operation of other clinics. — Any local mental health authority desiring to establish a mental health clinic shall submit an application to the Department of Human Resources. If the Department of Human Resources gives favorable consideration to the application, the Department of Human Resources may include the State's share of the cost of operating the proposed local clinic in its next budget request.

All local clinics are to be considered a joint undertaking by the Department of Human Resources representing the State and the local mental health authority representing the area served by the clinic.

All procedures regarding the establishment and operation of the clinics not covered under the provisions of this Article may be prescribed by regulation of the Commission for Mental Health Services. (1963, c. 1166, s. 6; 1965, c. 796; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health" in the first and second paragraphs and "Commission for Mental Health Services" for "State Board of Mental Health" in the third paragraph.

§ 122-35.7. Supervision of local clinics; clinical directors. — Each clinic established pursuant to the provisions of this Article must be operated under the supervision of the Department of Human Resources. There must be a residential clinical director of each clinic who shall be responsible for its administration. The clinical director shall be a medical doctor duly licensed by the State of North Carolina with adequate training and experience in psychiatry acceptable to the Secretary of Human Resources. (1963, c. 1166, s. 6; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Mental Health" and "Secretary of Human Resources" for "Commissioner of Mental Health."

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§ 122-35.8. Appointment of local clinical directors and staff. — The local mental health authority shall appoint, subject to the approval of the Secretary of Human Resources, the clinical director of the local mental health clinic. The director of the clinic shall appoint all members of the staff of the clinic. (1963, c. 1166, s. 6; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Mental Health."

§ 122-35.9. Physical property to be furnished by local or federal authorities. — All real estate, buildings, and equipment necessary to the operation of the local mental health clinic must be supplied from local or federal funds, or both, and such property shall be and remain the property of the local mental health authority. Provided, that where two or more local governmental units combine to establish joint mental health services in accordance with the provisions of G.S. 122-35.5, the real estate, buildings, and equipment may by agreement be supplied from the funds of and remain the property of the local governmental unit in which they are located. (1963, c. 1166, s. 6; 1965, c. §00, s. 7.)

§ 122-35.10. Fees for services. — The collection of fees for services performed in the child-guidance clinic shall be optional with the local mental health authority. The local clinics serving adult persons shall provide for the collection of fees from individuals accepted for services who are able to pay for such services. No person is to be refused services because of the inability to pay the fees. The fees to be charged are to be fixed by the local mental health authority and all funds so collected shall be utilized for the fiscal operation of the local mental health authority. (1963, c. 1166, s. 6.)

§ 122-35.11. Local funds for mental health clinics. — The local mental health authority shall be responsible for obtaining the necessary local funds for the support of the clinic. All such funds are to be placed under the direction of the local mental health authority and are to be used for the purchase of land, buildings, equipment, secretarial services, supplies, maintenance, and to pay the professional staff. (1963, c. 1166, s. 6.)

§ 122-35.12. Grants-in-aid to local mental health authorities. — From State and federal funds available to the Department of Human Resources, the Department is to make grants-in-aid to the local mental health authorities as follows: two thirds of the first thirty thousand dollars (\$30,000) of the approved budget of the local mental health authority and one half of the remainder of the approved budget: Provided, that where two or more local governmental units combine to establish joint mental health services in accordance with the provisions of G.S. 122-35.5, two thirds of the first thirty thousand dollars (\$30,000) of the share of each participating unit and one half of the remainder of the share of the unit shall be paid from State and federal funds. Where the actual expenditures of the local mental health authority are less than the approved budget, the State and federal grants-in-aid are to be determined on the basis of actual expenditures rather than the approved budget. For purposes of this section the terms approved budget and actual expenditures are not to include the items specified in G.S. 122-35.9. (1963, c. 1166, s. 6; 1965, c. 800, s. 8; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.12A. Direct grants to local mental health authorities for services to emotionally disturbed children. — From State and federal funds available to the Department of Human Resources, the Department shall make direct grants to local mental health authorities for the sole purpose of

§ 122-35.13 CH. 122. HOSPITALS FOR THE MENTALLY DISORDERED § 122-35.16

programs of direct service to emotionally disturbed children which shall be in addition to the matching grants provided elsewhere in this Article. Such grants shall be awarded on the basis of need and shall have as their objective the treatment of the maximum number of emotionally disturbed children in the community rather than in institutions. (1973, c. 476, s. 133; c. 584, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 133, "Department of Human Resources" has been substituted for "Department of Mental Health" in this section as enacted by Session Laws 1973, c. 584, s. 3.

ARTICLE 2B.

Rehabilitation of Alcoholics.

§ 122-35.13. Appropriation to Department of Human Resources; establishment of subdivision on alcoholism. — There is hereby appropriated from the general fund to the Department of Human Resources the sum of five hundred thousand dollars (\$500,000) for the biennium, 1967-1969, and during each biennium thereafter, which funds shall be expended for programs to be designated except that one hundred thousand dollars (\$100,000) of said appropriation by the Department of Human Resources for alcoholic rehabilitation on the local level shall be used by the Department of Human Resources for establishment of a subdivision on alcoholism to direct and coordinate departmental alcoholism programs at the local level. (1967, c. 1240, s. 2; 1973, c. 476, s. 133.)

Cross Reference. — As to facilities and programs for treatment of alcoholism, see also § 122-7.1.

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health" in three places and substituted "subdivision" for "division" near the end of the section.

§ 122-35.14. Use of funds by local government agencies. — Said funds shall be made available to local government alcoholic rehabilitation agencies to be used by such agencies in accordance with the alcoholic rehabilitation program of the Department of Human Resources, for local programs of education, treatment of alcoholics, and to provide counseling and advisory services to alcoholics and their families, and to any person directly affected by alcoholics and alcoholism. (1967, c. 1240, s. 3; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.15. Local government agencies to match State funds. — Before any funds shall be made available to any local government agency said agency shall have matched, on a dollar-for-dollar basis, the funds made available for the purposes herein stated. (1967, c. 1240, s. 4.)

§ 122-35.16. Multi-city or multi-county governmental agency; prerequisites to receiving matching funds. — Any local government unit, whether city or county, may combine with any other local government unit or units to form a multi-city, or multi-county governmental agency for the purposes herein set forth. Before such agency shall be eligible to receive matching funds for the purposes herein expressed, it must have first submitted a plan for alcoholic rehabilitation, education and counseling which shall have been approved by the Department of Human Resources as being in accordance with the statewide program. It shall be a prerequisite to approval that at least fifty percent (50%) of the total expenditure by any local agency shall be for programs of education in regard to alcoholism and for dissemination of facts regarding the use of beverage alcohol, and a portion of such fifty percent (50%) of said funds shall be for counseling, advising and treating the spouses, members of the families of alcoholics, and any other persons directly affected

§ 122-35.17 CH. 122. HOSPITALS FOR THE MENTALLY DISORDERED § 122-35.19

by alcoholics and alcoholism when, in the opinion of the Department of Human Resources, such treatment of such persons would be necessary or advisable. (1967, c. 1240, s. 5; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

§ 122-35.17. Construction of local alcoholic rehabilitation centers. — Funds from the appropriation herein made may be expended for construction of local alcoholic rehabilitation centers, if matched for such purpose on a dollar-for-dollar basis, only if such construction shall have been approved by the Department of Human Resources, and express authorization shall have been granted by the General Assembly. (1967, c. 1240, s. 6; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Department of Mental Health."

ARTICLE 2C.

Establishment of Area Mental Health Programs.

§ 122-35.18. Definitions. — For purposes of this Article, the following definitions shall apply:

- (1) "Area" means a geographic entity consisting of one or more counties, or portions of one or more counties, designated by the Commission for Mental Health Services as a basic unit for the development of mental health programs to serve the population of that geographic entity.
- (2) "Mental health program" means any services or activities, or combination thereof, for the diagnosis, treatment, care, or rehabilitation of mentally impaired persons or for the promotion of mental health, which is offered by or on behalf of the geographic entity established pursuant to this Article. (1971, c. 470, s. 1; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Commission for Mental Health Services" for "Board of Mental Health" in subdivision (1).

§ 122-35.19. Area mental health programs. — The Commission for Mental Health Services is authorized to establish area mental health programs. These shall be joint undertakings of the counties or portions thereof, included in the designated area, and the Department of Human Resources for the following purposes:

- (1) To develop area mental health programs, to consist of a combining and interrelationship of resources, personnel, and facilities of the Department of Human Resources, and of the community mental health program to serve the population of the area designated pursuant to this Article. The area mental health program shall include, but not be limited to, programs for general mental health, mental disorder, mental retardation, alcoholism, drug dependence, and mental health education.
- (2) With the approval of the Advisory Budget Commission to develop and test budgeting procedures for combining local and State grant-in-aid funds with funds appropriated for the operation of departmental facilities serving the population of the region. Provided, that "local funds" and "State grant-in-aid" shall be defined and determined in accordance with the provisions of G.S. 122-35.11 and G.S. 122-35.12 and shall be unaffected by the addition of funds appropriated for the operation of State facilities.

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- (3) To evaluate the effectiveness and efficiency of area mental health programs. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661.)

Editor's Note. — The first 1973 amendment substituted "Commission for Mental Health Services" for "North Carolina Board of Mental Health" and "Department of Human Resources" for "Department of Mental Health" in the introductory paragraph, and substituted "Department of Human Resources" for "Department of Mental Health," in subdivision (1.)

The second 1973 amendment substituted "Advisory Budget Commission" for "Department of Administration," deleted "a proportional share of" preceding "funds" and substituted "region" for "area," all in the first sentence of subdivision (2). The amendment also substituted "grant-in-aid" for "grants-in-aid" in two places in subdivision (2).

§ 122-35.20. **Area mental health boards.** — (a) In areas where area mental health programs are established in accordance with this Article, an area mental health board shall be appointed for each designated area. The area mental health board shall meet at least six times per year and, if appointed, shall consist of 15 members.

~~(b) In areas consisting of only one county with a population of 325,000 or more, the board of county commissioners may serve as the area mental health board, or they shall appoint all the members of the area mental health board. In areas consisting of more than one county and in areas consisting of only one county where the population is less than 325,000, each board of county commissioners within the area shall appoint one commissioner as a member of the area mental health board. These members shall appoint the other members of the area mental health board in such a manner as to provide equitable area-wide representation.~~

~~(c) The area mental health board, if appointed, shall include:~~

- ~~(1) At least one commissioner from each county;~~
- ~~(2) At least two persons duly licensed to practice medicine in North Carolina;~~
- ~~(3) At least one representative from the professional fields of psychology, or social work, or nursing, or religion;~~
- ~~(4) At least three representatives from local citizen organizations active in mental health, or in mental retardation, or in alcoholism, or in drug dependence;~~
- ~~(5) At least one representative from local hospitals or area planning organizations;~~
- ~~(6) At least one attorney practicing in North Carolina.~~

(d) Any member of an area mental health board who is a public official shall be deemed to be serving on the board in an ex officio capacity to his public office. The ex officio members shall serve to the end of their respective terms as public officials. The other members, if any, shall serve four-year terms, except that upon initial formation of an area mental health board, three members shall be appointed for one year, two members for two years, three members for three years, and all remaining members for four years.

~~(e) Subject to the rules and regulations of the State Commission for Mental Health Services, the area mental health board shall be responsible for reviewing and evaluating the area needs and programs in mental health, mental impairment, mental retardation, alcoholism, drug dependence, and related fields, and for developing jointly with the Department of Human Resources an annual plan for the effective development, use and control of State and local facilities and resources in a comprehensive program of mental health services for the residents of the area. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133.)~~

Editor's Note. — The first 1973 amendment transferred the phrase "shall consist of 15 members" from near the beginning to the end of the second sentence of subsection (a), inserted "if appointed" in that sentence,

inserted "with a population of 325,000 or more" and "may serve as the area mental health board, or they" in the first sentence and "and in areas consisting of only one county where the population is less than 325,000" in the second

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sentence of subsection (b), inserted "if appointed" in the introductory language in subsection (c) and inserted "if any" near the beginning of the third sentence of subsection (d).

The second 1973 amendment substituted "Subject to the rules and regulations of the

State Commission for Mental Health Services" for "Subject to the supervision, direction and control of the State Board of Mental Health" at the beginning of subsection (e) and substituted "Department of Human Resources" for "State Department of Mental Health" near the middle of subsection (e).

§ 122-35.21. Appointment of area mental health director. — The area mental health board of each area established pursuant to this Article shall appoint, with the approval of the Secretary of Human Resources and the Department of Human Resources, an area mental health director. The area mental health director shall be the employee of the area mental health program, responsible to the area mental health board for carrying out the policies and programs of the area mental health board, and the rules and regulations of the Commission for Mental Health Services. (1971, c. 470, s. 1; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Mental Health" and "Department of Human Resources" for "State Board of Mental Health" in the first sentence

and "the rules and regulations of the Commission for Mental Health Services" for "of the State Board of Mental Health" at the end of the second sentence.

§ 122-35.22. Clinical services. — All clinical services under an area mental health program shall be under the supervision of a person duly licensed to practice medicine in North Carolina. (1971, c. 470, s. 1.)

§ 122-35.23. Withholding of funds prohibited. — No funds otherwise available for any county, municipal, or other local mental health department shall be withheld or diminished because of failure or refusal of such local mental health department to join an area or regional mental health district. (1973, c. 650.)

§ 122-35.23A. Allocation of funds to area programs. — Appropriations shall be made annually by the Department of Human Resources to area mental health programs for the provision of community-based services. Allocations shall be made in the form of a base grant computed on the basis of five hundred dollars (\$500.00) per 1000 population within the catchment area. Additional allocation may be made to the area mental health program on a formula basis as determined by the area's relative ability to fund mental health services. In no case shall the allocation formula provide for less than one-for-one State matching funds nor more than nine-for-one. Funding shall be continued upon the area program maintaining at least the same level of local financial participation as in the fiscal year 1973. For the purpose of this section, local financial participation shall not include State or federal funds.

Where local mental health programs have not been established as area programs, appropriations shall be allocated on the basis of two thirds of the first thirty thousand dollars (\$30,000) of the approved budget and one half of the remainder of the budget.

Appropriations shall be allocated to area mental health programs in accordance with the annual plan, approved by both the area board and the Department of Human Resources. Where the actual expenditures for the fiscal period are less than the approved budget, the State's share of the operating costs shall be determined on the basis of actual expenditure with any overpayment of State funds being refunded to the Department of Human Resources within 90 days after the close of the fiscal period.

Appropriations to area programs shall be used exclusively for the operating costs of the programs with all real estate, buildings, and equipment necessary to the operation of such program being provided by local or federal funds, or

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both, and title to such property shall remain with the area program. (1973, c. 476, s. 133; c. 613.)

Editor's Note. — Pursuant to Session Human Resources" has been substituted for Laws 1973, c. 476, s. 133, "Department of "Department of Mental Health."

ARTICLE 2D.

Community Drug Abuse Programs.

§ 122-35.24. Establishment of community-based drug abuse programs.

— The Secretary of Human Resources is hereby authorized and directed to establish as the need arises and as funds permit, in areas to be designated by the Secretary of Human Resources, community-based programs for the treatment and prevention of drug abuse. Such programs shall be as comprehensive as fiscal limitations permit and may include, but need not be limited to, the following services relative to the treatment and prevention of drug abuse: inpatient services, outpatient services, partial hospitalization, emergency services, consultation and education services, diagnostic services, rehabilitation services, precare and aftercare services, training, and research and evaluation. (1971, c. 1123, s. 1; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Mental Health."

§ 122-35.25. Funding of community-based drug abuse programs. —

Moneys appropriated to the Department of Human Resources to be used for funding community-based drug abuse programs shall be allocated and expended in such manner as is provided in the act appropriating same. (1971, c. 1123, s. 2; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Mental Health."

§ 122-35.26. Local mental health authorities to operate drug abuse programs. — The local mental health authorities representing the areas selected by the Secretary of Human Resources for the establishment of community-based drug abuse programs shall be responsible for the operation of such programs in accordance with rules and regulations of the State Commission for Mental Health Services governing the operation of community-based drug abuse programs. Failure to comply with these standards, as determined by the Commission for Mental Health Services, shall be grounds for the Department of Human Resources to cease participating in the funding of the particular community-based drug abuse program. Where necessary or expedient the local mental health authority, or its administrative agent, may contract with other agencies, institutions, or resources for the provisions of one or more of the services needed for the proper operation of the community-based drug abuse program, but it shall remain the responsibility of the local mental health authority to insure that such contracted services meet the rules and regulations as set by the Commission for Mental Health Services. (1971, c. 1123, s. 3; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Mental Health" in the first sentence, substituted "Commission for Mental Health Services" for "Commissioner of Mental Health" in the second sentence and at the end of the last sentence, and substituted "Department of Human Resources" for "State

Department of Mental Health" in the second sentence. The amendment also substituted "rules and regulations of the State Commission for Mental Health Services" for "standards set by the Commissioner of Mental Health" in the first sentence and substituted "rules and regulations" for "standards" near the end of the last sentence.

§ 122-35.27. Selection of areas in which community-based drug abuse programs are to be established. — As funds available to the Department of Human Resources for such purpose permit, the Secretary of Human Resources

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commitment proceedings under Article 5A of this Chapter shall be furnished through the appropriate clerk's office to the respondent's counsel, and to the court and the district attorney in hearings and rehearings conducted pursuant to Article 5A. Except as to matters pertaining to the commitment under review, the confidentiality of the physician-patient relationship shall be preserved. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2.)

Editor's Note. —

The third 1973 amendment, ratified April 12, 1974, and made effective 60 days after ratification, designated the former provisions of the section as subsection (a) and added subsection (b).

Information May Be Submitted, etc. —

The citation to the opinion of the Attorney General under this catchline in the bound volume should be "42 N.C.A.G. 206 (1973)". — Ed. note.

ARTICLE 2B.

Rehabilitation of Alcoholics.

§ 122-35.15. Allocation by Department of Human Resources; local funds. — Allocation of funds pursuant to the provisions of this Article by the Department of Human Resources shall be made on the same basis as those under Article 2C of this Chapter as provided by G.S. 122-35.23A. (1967, c. 1240, s. 4; 1973, c. 1465, s. 1.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote this section, which formerly required local government

agencies to match State funds on a dollar-for-dollar basis.

ARTICLE 2C.

Establishment of Area Mental Health Programs.

§ 122-35.20. Area mental health boards.

(b) In areas consisting of only one county with a population of 275,000 or more, the board of county commissioners may serve as the area mental health board, or they shall appoint all members of the area mental health board. In areas consisting of more than one county where the population is less than 275,000, each board of county commissioners within the area shall appoint one commissioner as a member of the area mental health board. These members shall appoint the other members of the area mental health board in such a manner as to provide equitable area-wide representation. In areas consisting of only one county where the population is less than 275,000, the board of county commissioners shall appoint all of the members of the area mental health board.

(c) The area mental health board, if appointed, shall include:

- (1) At least one commissioner from each county;
- (2) At least two persons duly licensed to practice medicine in North Carolina;
- (3) At least one representative from the professional fields of psychology, or social work, or nursing, or religion;
- (4) At least three representatives from local citizen organizations to include one each from those active in areas of alcohol and drug dependency, mental health, and mental retardation;
- (5) At least one representative from local hospitals or area planning organizations;
- (6) At least one attorney practicing in North Carolina.

(e) Subject to the rules, regulations and standards of the Commission for Mental Health Services, the area mental health board shall be responsible for reviewing and evaluating the area needs and programs in mental health, mental impairment, mental retardation, alcoholism, drug dependency, and related fields, and for developing jointly with the State Department of Human Resources an annual plan for the effective development, use and control of State and local facilities and resources in a comprehensive program of mental health services for the residents of the area. Area mental health boards are local political subdivisions created jointly by county or counties and the North Carolina Commission for Mental Health Services, and employees thereof are local employees; however, for the purpose of personnel administration Chapter 126 shall be applicable.

(f) This plan shall include an inventory of existing services provided by the area program for the mentally ill, mentally retarded, alcoholic and drug abuser, services to be provided these groups during the next fiscal year, and projected services for these groups during the following four years. The annual plan shall indicate the expenditure of all State funds for each service provided, separate from other federal and local funds. The annual plan of each area shall include a specific contractual or services plan for relating to the State mental hospital, center for the mentally retarded, and/or alcoholic rehabilitation center located within the area's mental health region. Before funds are provided to area programs, counties, municipalities, or other local mental health departments, such annual plans shall be submitted to and approved by the Department of Human Resources. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4.)

Editor's Note. —

The third 1973 amendment substituted "275,000" for "325,000" in the first and second sentences of subsection (b).

The 1975 amendment, effective July 1, 1975, deleted "and in areas consisting of only one county" following "more than one county" near the beginning of the second sentence of subsection (b), added the fourth sentence of subsection (b), rewrote subdivision (4) of subsection (c), substituted "rules, regulations

and standards of the Commission for Mental Health Services" for "rules and regulations of the State Commission for Mental Health Services" near the beginning of the first sentence of subsection (e), made other minor changes of wording in the first sentence and added the second sentence of subsection (e) and added subsection (f).

As subsections (a) and (d) were not changed by the amendments, they are not set out.

ARTICLE 2D.

Community Drug Abuse Programs.

§ 122-35.25. Funding of community-based drug abuse programs. — Moneys appropriated to the Department of Human Resources to be used for funding community-based drug abuse programs shall be allocated and expended on the same basis as those under Article 2C of this Chapter as provided in G.S. 122-35.23A. (1971, c. 1123, s. 2; 1973, c. 476, s. 133; c. 1465, s. 2.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "on the same basis as those

under Article 2C of this Chapter as provided in G.S. 122-35.23A" for "in such manner as is provided in the act appropriating same."

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§§ 122-35.28 to 122-35.32: Reserved for future codification purposes.

ARTICLE 2E.

Licensing of Local Mental Health Facilities.

§ 122-35.33. **Licensing required.** — Any local mental health facility, of whatsoever nature, which is operated under the provisions of Chapter 122 of the General Statutes is required to obtain a license permitting such operation. The Commission for Mental Health Services shall promulgate the rules, regulations and standards governing the operation and licensing of these facilities. The Department of Human Resources shall be responsible for administrative support of the Commission in formulating these rules, regulations and standards and for their enforcement. The Department of Human Resources shall conduct required inspections of these facilities and shall issue or deny licenses to these facilities in accordance with the rules, regulations and standards adopted by the Commission. (1975, c. 864, s. 1.)

Editor's Note. — Session Laws 1975, c. 864, s. 2, makes the act effective July 1, 1976.

§ 122-35.34. **Appeal from the denial or revocation of a license.** — Any local mental health facility as described in G.S. 122-35.33 which has been denied a license or whose license has been revoked by the Department of Human Resources shall be notified in writing of said denial or revocation and shall be entitled to a hearing before the Commission for Mental Health Services upon filing with the Commission within 30 days after the challenged decision a written appeal from the adverse decision of the Department. All hearings shall be open to the public and the decision of the Commission on the matter shall be transmitted to the appellant within a reasonable period of time after such hearing. (1975, c. 864, s. 1.)

ARTICLE 3.

Admission of Patients; General Provisions; Patients' Rights.

Part 1. Admission of Patients; General Provisions.

§ 122-36. Definitions.

(f) Repealed by Session Laws 1973, c. 1408, s. 3.
(1973, c. 1408, s. 3.)

Editor's Note. —

The second 1973 amendment, ratified April 12, 1974, and made effective 60 days after ratification, repealed subsection (f), defining "qualified physician."

As the other subsections were not changed by the amendment, they are not set out.

Stated in *Powell v. Duke Univ., Inc.*, 18 N.C. App. 736, 197 S.E.2d 910 (1973).

Cited in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND ARTICLE 4 OF CHAPTER 122 OF THE GENERAL STATUTES TO
3 PROTECT THE PRIVACY OF MINORS VOLUNTARILY ADMITTED TO A TREATMENT
4 FACILITY BY MAKING THE COURT RECORD OF ADMISSION CONFIDENTIAL.
5
6 The General Assembly of North Carolina enacts:
7 "Section 1. The 'Voluntary Admission' procedure provided by
8 Article 4 of Chapter 122 of the General Statutes is hereby amended by
9 adding new sections immediately following G.S. 122-56.7, to be numbered
10 G.S. 122-56.8 and G.S. 122-56.9, and to read as follows:
11
12 'G.S. 122-56.8. Confidentiality of the court record of minors;
13 violation a misdemeanor; court record to be expunged when the minor
14 becomes an adult. --
15 (a) The court records of a minor made in all proceedings pursuant
16 to G.S. 122-56.7 are hereby declared to be confidential and shall not
17 be open to the general public for inspection except when such disclosure
18 is provided for in G.S. 122-56.9.
19 (b) It shall be a misdemeanor for any person to disclose the
20 confidential court records of subsection (a) of this section to members
21 of the general public.
22 (c) The court records described in subsection (a) of this section
23 shall be expunged from the files of the court when the minor reaches the
24 age of 18 years.

SESSION 197 7

-52-

1 G.S. 122-56.9. Exception to confidentiality rule; procedure. --

2 (a) Any person seeking needed information contained in the
3 court files or the court records of proceedings involving minors made
4 pursuant to an action under G.S. 122-56.7 may file a written motion in
5 the cause before a magistrate or clerk of court of the original
6 jurisdiction. The magistrate or clerk may issue an order to disclose
7 the information sought if he feels such order is appropriate under the
8 circumstances, however, before disclosure of such information, the
9 order of the magistrate or clerk must be reviewed by a district court
10 judge who shall approve the order, if he finds that it is in the
11 best interest of the minor or of the public to have such information
12 disclosed.

13 (b) The original order to disclose information from the court
14 files or court records must be filed with the proceedings in the office
15 of the magistrate or clerk. If the magistrate or clerk shall refuse
16 to issue such order, the party requesting such order may appeal to
17 a district court judge of that jurisdiction who may order said
18 disclosure, if, in his opinion, it is in the best interest of the
19 child or public.'''

20 "Section 2. This act shall become effective on
21 July 1, 1977."

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- (3) Keep and use his own clothing and personal possessions under appropriate supervision;
- (4) Participate in religious worship;
- (5) Receive such assistance as needed in sending and receiving correspondence, and in making telephone calls at his own expense;
- (6) Receive visitors, under appropriate supervision, between the hours of 8 A.M. and 9 P.M. for a period of at least six hours daily, two hours of which shall be after the hour of 6 P.M., such visiting not to take precedence over school or therapies; and
- (7) Have access to individual storage space for his own use.

(c) No right enumerated in subsection (b) may be restricted without a written statement in the minor's treatment or habilitation plan which indicates the detailed reason for such restriction. No restriction of rights shall be made except by mental health or mental retardation professionals responsible for the formulation of the patient's treatment or habilitation plan. A written restriction shall be effective for a period not to exceed 60 days and shall be renewed only by a written statement entered by a mental health or mental retardation professional in the minor's treatment or habilitation plan which indicates the detailed reasons for such renewal. Provided, however, that no restriction may be placed upon the right of any patient to communicate with an attorney of the patient's choice, to have that attorney visit with him and, with the consent of the patient, to have the attorney provided with copies of all pertinent records and information relating to the patient.

(d) G.S. 122-55.3, 122-55.4, 122-55.5, and 122-55.6 are also applicable to minors. (1973, c. 1436, s. 8.)

ARTICLE 4.

Voluntary Admission.

§ 122-56.1. Declaration of policy. — It is the policy of the State to encourage voluntary admissions to treatment facilities; and to assure that the admission of any person with mental illness to a treatment facility shall be implemented under conditions that protect the dignity and rights of the person. (1973, c. 723, s. 1; c. 1084.)

Revision of Article. — Session Laws 1973, c. 1084, revised and rewrote this Article, substituting present §§ 122-56.1 through 122-56.6 for former §§ 122-56.1 through 122-56.3 and 122-57. No attempt has been made to point out the changes effected by the revision, but, where appropriate, the historical citations to the sections of this Article as it stood before the

revision have been added to similar sections in the Article as revised.

A Minor May Be Voluntarily Admitted upon His Request without Application for Admission by Parent. — See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services, Division of Mental Health Services, 44 N.C.A.G. 3 (1974).

§ 122-56.2. Definitions. — (a) The words "inebriety," "mental illness," and "qualified physician," as used in this Article, have the same meaning as they are given in G.S. 122-36, subsections (c), (d), and (f), respectively.

(b) The words "treatment facility," as used in this Article, mean any hospital or institution operated by the State of North Carolina and designated for the admission of any person in need of care and treatment due to mental illness or inebriety, and any community mental health clinic or center operated in conjunction with the State. (1973, c. 723, s. 1; c. 1084.)

§ 122-56.3

GENERAL STATUTES OF NORTH-CAROLINA

§ 122-56.5

§ 122-56.3. Procedure for voluntary admissions. — Any person who believes himself to be in need of treatment for mental illness or inebriety may seek voluntary admission to a treatment facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the person seeking admission, is required. The application shall acknowledge that the applicant may be held by the treatment facility for a period of 72 hours subsequent to any written request for release that he may make. At the time of application, the facility shall provide the applicant with the appropriate form for discharge. The application form shall be available at all times at all treatment facilities. However, no one shall be denied admission because application forms are not available. Any person voluntarily seeking admission to a treatment facility must be examined and evaluated by a qualified physician of the facility within 24 hours of presenting himself for admission. The evaluation shall determine whether the person is in need of treatment for mental illness or inebriety, or further psychiatric evaluation by the facility. If the evaluating physician or physicians determine that the person is not in need of treatment or further evaluation by the facility, or that the person will not be benefitted by the treatment available, the person shall not be accepted as a patient. (1973, c. 723, s. 1; c. 1084.)

Voluntarily Admitted Patient May Be Involuntarily Returned after Escape. — See opinion of Attorney General to Mr. R.J. Bickel, Division of Mental Health Services, Department of Human Resources, 44 N.C.A.G. 52 (1974).

Quoted in *In re Long*, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

§ 122-56.4. Voluntary admission to Psychiatric Training and Research Center at North Carolina Memorial Hospital. — Any person believing himself in need of treatment for mental illness or inebriety may voluntarily apply for admission to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in Chapel Hill in the same manner as he would apply for voluntary admission to any State hospital. Upon approval of his application by the Director of the Inpatient Service, the applicant may be admitted. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2; 1973, c. 723, s. 3; c. 1084.)

§ 122-56.5. Representation of minors and persons adjudicated non compos mentis. — In applying for admission to a treatment facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article, a parent, person standing in loco parentis, or guardian shall act for a minor, and a guardian or trustee shall act for a person adjudicated non compos mentis. (1973, c. 1084.)

Article 4 of Chapter 122 is constitutionally inadequate to protect interest of minor who is admitted at the parent's request. *In re Long*, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

Minor is entitled to protection of due-process procedures. *In re Long*, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

Policy extending due process protections to minors, enunciated in *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) is applicable to minor under this section. *In re Long*, 25 N.C. App. 702, 214 S.E.2d 626 (1975).

§ 122-56.6

1975 CUMULATIVE SUPPLEMENT

§ 122-58.2

§ 122-56.6. **Voluntary admission not admissible in involuntary proceeding.** — The fact that one has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1973, c. 1084.)

§ 122-56.7. **Judicial determination.** — (a) A hearing shall be held in district court in the county in which the treatment facility is located within 10 days of the day a minor or a person adjudicated non compos mentis is admitted to a treatment facility pursuant to G.S. 122-56.5.

(b) The court shall determine whether

(1) Such person is mentally ill or inebriate and

(2) Is in need of further treatment at the treatment facility.

(c) The initial hearing and all subsequent proceedings shall be governed by the involuntary commitment procedures of Chapter 122, Article 5A of the General Statutes. Provided that, in a case involving an indigent respondent located at a regional psychiatric facility for the care and treatment of the mentally ill and inebriate, special counsel authorized by G.S. 122-58.12 shall act as his counsel at the initial hearing. (1975, c. 839.)

§ 122-57: Repealed by Session Laws 1973, c. 1084.

Revision of Article. — See same catchline under § 122-56.1.

ARTICLE 5A.

Involuntary Commitment.

§ 122-58.1. **Declaration of policy.** — It is the policy of the State that no person shall be committed to a mental health facility unless he is mentally ill or an inebriate and imminently dangerous to himself or others; that a commitment will be accomplished under conditions that protect the dignity and constitutional rights of the person; and that committed persons will be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 726, s. 1; c. 1408, s. 1.)

Revision of Article. — Session Laws 1973, c. 1408, ratified April 12, 1974, and made effective 60 days after ratification, revised and rewrote this Article, substituting present §§ 122-58.1 through 122-58.18 for former §§ 122-58.1 through 122-58.8. No attempt has been made to point out the changes effected by the revision, but where appropriate, the historical citations to

the sections of the former Article have been added to corresponding sections in the Article as revised.

Applied in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Quoted in *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 122-58.2. **Definitions.** — As used in this Article:

- (1) The phrase "dangerous to himself" includes, but is not limited to, those mentally ill or inebriate persons who are unable to provide for their basic needs for food, clothing, or shelter;
- (2) The words "inebriety" and "mental illness" have the same meaning as they are given in G.S. 122-36; and
- (3) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, and State highway patrolman. (1973, c. 726, s. 1; c. 1408, s. 1.)

Cited in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

SESSION 197 7

-57-

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND G.S. 143B - 182 and G.S. 143B - 183 TO MODIFY THE STATE
3 MENTAL HEALTH COUNCIL FOR THE PURPOSE OF MEETING REQUIREMENTS SET BY
4 FEDERAL AUTHORITIES AS A CONDITION TO RECEIVING FEDERAL AID.

5
6 The General Assembly of North Carolina enacts:

7 "Section 1. G.S. 143B-182 is hereby amended by adding the word
8 'Advisory' to the section heading and the two sentences of this section
9 so that the phrase 'Mental Health Council' will now read 'Mental Health
10 Advisory Council.' This will require the insertion of the word 'Advisory'
11 between 'Health' and 'Council' in four places."

12 "Sec. 2. G.S. 143B-182 is further amended by adding the
13 following sentence as subdivision 3: '(3) Additionally, the Mental Health
14 Advisory Council shall consult with the Secretary of Human Resources in
15 administering a State plan for the provision of comprehensive mental health
16 services and the Council is empowered to engage in any activities specified
17 in federal mental health legislation for the purpose of meeting requirements
18 set by federal authorities as a condition to receiving federal aid.'"

19 "Sec. 3. G.S. 143B-183 is hereby amended by adding the word
20 'Advisory' to the section heading and the first sentence of the section
21 so that the phrase 'Mental Health Council' will now read 'Mental Health
22 Advisory Council.' This will require the insertion of the word 'Advisory'
23 between 'Health' and 'Council' in two places."

24 "Sec. 4. G.S. 143B-183 is amended by striking the number '21'

1 on line 2 of the section and replacing it with 'no more than 35.'"

2 "Sec. 5. Subdivision (3) of G.S. 143B-183 is hereby rewritten
3 to read as follows:

4 '(3) Up to 23 at large members. These appointments shall be
5 made pursuant to current federal rules and regulations which prescribe
6 the selection process and demographic blend as a necessary condition
7 to the receipt of federal aid. At the Governor's request, the Department
8 of Human Resources shall render to the Governor such advice and assistance
9 as may be required to make the proper appointments to meet the federal
10 requirements. The Governor shall exercise his power of appointment to
11 reconstitute or fill vacancies on the Council in a manner that will
12 meet current federal rules and regulations concerning the Council.'"

13 "Sec. 6. The sentence beginning on line 30 of G.S. 143B-
14 183 which reads in part 'Members of the Council shall receive per diem...'
15 is hereby rewritten to read as follows:

16 'Council members who are members of the General Assembly shall
17 receive subsistence and travel allowance at the rate set forth in
18 G.S. 120-3.1(b) and (c). Council members who are employees of the
19 State shall receive travel allowances at the rate set forth in G.S.
20 138-6. All other Council members shall receive per diem compensation
21 and travel expenses at the rate set forth in G.S. 138-5.'"

22 "Sec. 7. G.S. 143B-183 is further amended by: (1) deleting
23 the phrase 'Department of Social Rehabilitation and Control' in sub-
24 division (1) of that section and substituting the phrase 'Department
25 of Correction' therefor and (2) deleting the phrase 'Council on Mental
26 Retardation' in subdivision (2) and substituting the phrase 'Council
27 on Developmental Disabilities' therefor."

28 "Sec. 8. This act shall become effective on July 1, 1977."

§ 143B-182 CH. 143B. EXECUTIVE ORGANIZATION ACT OF 1973 § 143B-183

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172.)

Part 15. Mental Health Council.

§ 143B-182. Mental Health Council — creation, powers and duties. — There is hereby created the Mental Health Council of the Department of Human Resources. The Mental Health Council shall have the following functions and duties:

- (1) To consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State; and
- (2) The Mental Health Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 174.)

§ 143B-183. Mental Health Council — members; selection; quorum; compensation. — The Mental Health Council of the Department of Human Resources shall consist of 21 members appointed by the Governor. The composition of the Council shall be as follows:

- (1) Nine members from the General Assembly and State government agencies as follows: two members of the Senate nominated by the President of the Senate, two members of the House of Representatives nominated by the Speaker of the House of Representatives, two representatives of the Department of Public Education, two representatives of the Department of Social Rehabilitation and Control, and one representative of the Department of Military and Veterans Affairs;
- (2) Three members designated by the respective associations to the Governor for appointment — one member representing the North Carolina Personnel and Guidance Association, one member representing the North Carolina Council on Mental Retardation and one member representing the North Carolina Council of Family Service Agencies; and
- (3) Nine members at large, who by their interest and efforts have helped provide or may help provide improved services for those who are mentally ill, mentally retarded, and inebriate.

The initial members of the Council shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department. (1973, c. 476, s. 175.)

FEDERAL LAW

Public Law 94-63

July 29, 1975

STATE PLAN

Sec. 237. (a) A State plan for the provision of comprehensive mental health services within a State shall be comprised of the following two parts:

(1) An administrative part containing provisions respecting the administration of the plan and related matters. Such part shall--

(A) provide for the designation of a State advisory council to consult with the State agency in administering such plan, which council shall include (i) representatives of non-government organizations or groups, and of State agencies, concerned with the planning, operation, or use of community mental health centers or other mental health facilities, and (ii) representatives of consumers and providers of the services of such centers and facilities who are familiar with the need for such services;

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND G.S. 148-19 TO DIRECT THE COMMISSION FOR MENTAL HEALTH
3 SERVICES TO PRESCRIBE STANDARDS FOR THE DELIVERY OF MENTAL HEALTH
4 SERVICES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION.
5
6 The General Assembly of North Carolina enacts:
7 "Section 1. G.S. 148-19 is hereby amended by adding a new
8 subsection at the end of that section to be designated as subsection (d)
9 and to read as follows:
10 '(d) The Commission for Mental Health Services shall
11 prescribe standards for the delivery of mental health services
12 to inmates in the custody of the Department of Correction. The
13 Commission for Mental Health Services shall give the Secretary
14 of Correction an opportunity to review and comment on proposed
15 standards prior to promulgation of such standards; however,
16 final authority to determine such standards remains with the
17 Commission. The Secretary of the Department of Human Resources
18 shall designate an agency or agencies within the Department of
19 Human Resources to monitor the implementation of such standards
20 by the Department of Correction. The Secretary of Human Resources
21 shall send a written report on the progress which the Department
22 of Correction has made on the implementation of such standards
23 to the Governor, the Lieutenant Governor, and the Speaker of the
24 House. Such reports shall be made on an annual basis beginning

1 January 1, 1978.'" "

2 "Section 2. - This act shall become effective July 1, 1977."

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Judgment. — The granting of honor-grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

Which Is Not Undeniable Right of Prisoner. — While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor-grade status,

work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles. — Whether a prisoner is entitled to honor-grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles. These agencies are charged with the duty and are properly given means of discharging it not available to the courts. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in *In re Swink*, 243 N.C. 86, 89 S.E.2d 792 (1955); *State v. Weaver*, 264 N.C. 681, 142 S.E.2d 633 (1965).

§§ 148-14 to 148-17: Repealed by Session Laws 1943, c. 409.

§ 148-18. Wages, allowances and loans. — (a) Prisoners may be compensated, at rates fixed by the Department's rules and regulations, for work performed and for attendance at training programs; provided, that no prisoner shall be paid more than one dollar (\$1.00) per day. Prisoners who are unable to work because of injury, illness, or other incapacity may be compensated at rates fixed by the Department's rules and regulations. The Prison Enterprises Fund shall be the source for all of these wages and allowances, and they shall be subject to forfeiture for poor work or misbehavior under the Department's rules and regulations, with the forfeited amounts being redeposited in the Prison Enterprises Fund.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Commission of Correction. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982.)

§ 148-19. Health services. — (a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

~~(b) Upon request of the Commissioner of Correction, the Secretary of Human Resources may detail personnel employed by the Department of Human Resources to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Human Resources, and reimbursed from applicable appropriations to the Department of Correction. The Commissioner of Correction may make similar arrangements with any other agency of State government able and willing to~~

~~aid the Department of Correction to meet the needs of prisoners for health services.~~

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a competent physician as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the report of the physician as to the prisoner's physical and mental condition. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Mental Health" and "Department of Human Resources" for "Department of Mental Health."

Additional Examinations. — Whenever there is a change of physical or mental

condition, it would seem to logically follow that a further examination is required under this section, yet, the frequency of such examinations must, as a practical matter, be left to the sound discretion of prison authorities. *Threatt v. North Carolina*, 221 F. Supp. 858 (W.D.N.C. 1963).

§ 148-20. Corporal punishment of prisoners prohibited. — It is unlawful for the Commissioner of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15.)

Striking Prisoner with Key Ring and Kicking Him into Cell Not Countenanced. — Nothing contained in this section can be said to countenance striking the prisoner with a key ring or kicking him into his cell. *Threatt v. North Carolina*, 221 F. Supp. 858 (W.D.N.C. 1963).

Whipping formerly permitted. — For construction of section prior to 1963, before which whipping was permitted, see *State v. Nipper*, 166 N.C. 272, 81 S.E. 164 (1914); *State v. Mincher*, 172 N.C. 895, 90 S.E. 429 (1916); *State v. Revis*, 193 N.C. 192, 136 S.E. 346 (1927).

§ 148-21: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-22. Treatment programs. — (a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contacts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs for the treatment and training of mentally retarded prisoners and other special groups shall be established in segregated sections of facilities housing other prisoners or in separate facilities when this is practicable.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State, or local government and with private agencies to promote the most effective use of available resources. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5.)

§ 148-18. Wages, allowances and loans. — (a) Prisoners employed in prison enterprises shall be compensated, at rates fixed by the Department of Correction's rules and regulations, for work performed; provided, that no prisoner working for prison enterprises shall be paid more than one dollar (\$1.00) per day from funds made available by the Prison Enterprises Fund.

Prisoners employed other than by prison enterprises and those involved in the maintenance and housekeeping of the prison system, shall be compensated at rates fixed by the Department of Correction's rules and regulations; provided, that no prisoner so paid shall receive more than one dollar (\$1.00) per day. The source of wages and allowances provided inmates who are not employed by prison enterprises shall be funds provided by the Department of Transportation to the Department of Correction for this purpose.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Department of Correction. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10; 1975, c. 506, s. 3; c. 716, s. 7.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Commission of Correction" at the end of subsection (c).

The first 1975 amendment, effective July 1, 1975, divided subsection (a) into two paragraphs and rewrote that subsection.

The second 1975 amendment substituted "Department of Transportation" for

"Department of Transportation and Highway Safety" near the end of subsection (a).

Session Laws 1975, c. 682, s. 4, provides: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

§ 148-19. Health services.

(b) Upon request of the Secretary of Correction, the Secretary of Human Resources may detail personnel employed by the Department of Human Resources to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Human Resources, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(1973, c. 1262, s. 10.)

Editor's Note. — The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. 148-22(b) TO ALLOW FOR INCREASED COOPERATION BETWEEN THE DEPARTMENT OF CORRECTION AND OTHER PUBLIC AND PRIVATE AGENCIES IN ORDER TO IMPROVE THE DELIVERY OF MENTAL HEALTH SERVICES TO INMATES OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

"Section 1. G.S. 148-22(b), as the same appears in the 1975 Cumulative Supplement to Volume 3C, is hereby amended by inserting the words 'health, mental health,' at the end of line 9 of that subsection so that the phrase now reads 'health, mental health, rehabilitative or training services'."

"Sec. 2. G.S. 148-22(b), as the same appears in the 1975 Cumulative Supplement to Volume 3C, is hereby amended by striking out the last sentence in that subsection which reads 'Providing that nothing herein contained shall authorize any such contract with the Division of Mental Health.'"

"Sec. 3. G.S. 148-22(b) is hereby amended by striking out the word 'may' immediately following the word 'Correction' and immediately preceding the word 'enter' on line 8 and inserting the word 'shall' in its place."

"Sec. 4. G.S. 148-22(b) is hereby amended by striking the word 'may' immediately following the word 'Department' and immediately preceding the word 'reimburse' on line 16 and inserting the word 'shall' in its place."

"Sec. 5. This act shall become effective July 1, 1977."

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§ 148-20. Corporal punishment of prisoners prohibited. — It is unlawful for the Secretary of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

§ 148-22. Treatment programs.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State, or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies offering needed rehabilitative or training services to provide housing sustenance and supervision, for such inmates of the Department of Correction as the Secretary may deem eligible. The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned. Provided that nothing herein contained shall authorize any such contract with the Division of Mental Health. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2.)

Editor's Note. — The 1975 amendment added the second paragraph of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 148-24. Religious services. — The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Secretary of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 TO PROVIDE FOR THE INVOLUNTARY COMMITMENT OF PERSONS WHO ARE MENTALLY RETARDED AND, BECAUSE OF AN ACCOMPANYING BEHAVIOR DISORDER, ARE IMMINENTLY DANGEROUS TO OTHERS.

The General Assembly of North Carolina enacts:

"Section 1. G.S. 122-58.1 is hereby rewritten to read as follows:

'G.S. 122-58.1. Declaration of policy.--It is the policy of this State that no person shall be committed to a mental health facility unless he is mentally ill or an inebriate and imminently dangerous to himself or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others; that a commitment will be accomplished under conditions that protect the dignity and constitutional rights of the person; and that committed persons will be discharged as soon as a less restrictive mode of treatment is appropriate.'"

"Sec. 2. G.S. 122-58.2 is hereby amended by striking the phrase "inebriety" and "mental illness" on line 1 of subsection (2) and substituting the phrase "inebriate," "mental illness," and "mentally retarded" therefor."

"Sec. 3. G.S. 122-58.3 is hereby amended by inserting the phrase ', or who is mentally retarded and, because of an accompanying behavior disorder, is imminently dangerous to others' between the words

1 'others' and 'may' on line 2 of subsection (a). Also insert the phrase
2 'or is mentally retarded and, because of an accompanying behavior disorder,
3 is imminently dangerous to others,' between the words 'others,' and 'he'
4 on line 3 of subsection (b)."

5 "Sec. 4. G.S. 122-58.4 is hereby amended by inserting the
6 phrase 'or is not mentally retarded or lacks a behavior disorder which
7 would cause the individual to be imminently dangerous to others,' between
8 the words 'others,' and 'the' on line 4 of subsection (c). Also insert
9 the phrase 'or is mentally retarded, and because of an accompanying
10 behavior disorder, is imminently dangerous to others,' between the words
11 'others,' and 'the' on line 7 of subsection (c).

12 "Sec. 5. G.S. 122-58.5 is hereby amended by inserting the
13 phrase 'or is mentally retarded, and because of an accompanying behavior
14 disorder, is imminently dangerous to others,' between the words 'others,'
15 and 'the' on line 3 of that section."

16 "Sec. 6. G.S. 122-58.6 is hereby amended by adding the phrase
17 'or is mentally retarded, and because of an accompanying behavior disorder,
18 is imminently dangerous to others,' between the words 'others,' and 'he'
19 on line 5 of subsection (a)."

20 "Sec. 7. G.S. 122-58.7 is hereby amended by inserting the
21 phrase 'or mentally retarded' between the word 'ill' and the comma which
22 immediately follows 'ill' on line 1 of subsection (c). Also insert the
23 phrase ', or is mentally retarded, and because of an accompanying behavior
24 disorder, is imminently dangerous to others' between the word 'others'
25 and the period which immediately follows 'others' on line 3 of subsection
26 (i)."

27 "Sec. 8. G.S. 122-58.8 is hereby amended by inserting the
28 phrase ', or is not mentally retarded or lacks a behavior disorder which

1 would cause the individual to be imminently dangerous to others' between
2 the word 'others' and the comma that immediately follows 'others' on line
3 2 of subsection (a). Also insert the phrase 'or is mentally retarded, and
4 because of an accompanying behavior disorder, is imminently dangerous
5 to others,' between the words 'others,' and 'it' on line 3 of subsection
6 (b)."

7 "Sec. 9. G.S. 122-58.11 is hereby amended by inserting the
8 phrase 'or is mentally retarded, and because of an accompanying behavior
9 disorder, is imminently dangerous to others,' between the words 'others,'
10 and 'and' on line 7 of subsection (d)."

11 "Sec. 10. Article 5A of Chapter 122 of the General Statutes
12 is hereby amended by adding a new section immediately following G.S. 122-
13 58.18 to be numbered G.S. 122-58.19 and to read as follows:

14 'G.S. 122-58.19. Place of commitment of persons who are
15 mentally retarded, and because of an accompanying behavior disorder,
16 are imminently dangerous to others.--A person who is mentally retarded,
17 and because of an accompanying behavior disorder, is imminently dangerous
18 to others shall be committed, when commitment is deemed proper by the
19 appropriate official pursuant to the provisions of this Article, to a
20 public or private mental health facility designated or licensed by the
21 Division of Mental Health Services. Nothing in this Article shall be
22 construed to permit the commitment of such individual to a regional
23 mental retardation center or a private mental retardation facility."

24 "Sec. 11. G.S. 122-58.12 is hereby amended by striking
25 the phrase 'mental illness or inebriety' on line 11 of subsection (a)
26 and substituting the phrase 'mental illness, inebriety, or mental
27 retardation with an accompanying behavior disorder' therefor. Also
28 strike out the phrase 'mentally ill and inebriate' on line 5 of

1 subsection (a) and substitute the phrase 'mentally ill, inebriate, and
2 mentally retarded with an accompanying behavior disorder' therefor."

3 "Sec. 12. G.S. 122-58.2 is hereby amended by adding a new
4 definition to that section which shall immediately follow the sentence
5 '(3) "Law-enforcement officer" means sheriff, deputy sheriff, police
6 officer, and state highway patrolman.' and shall read as follows:

7 '(4) "Behavior disorder" when used in this Article shall
8 mean a pattern of maladaptive behavior that is
9 recognizable by adolescence or earlier and is
10 characterized by gross outbursts of rage or physical
11 aggression against other persons or property.'"

12 "Sec. 13. This act shall become effective on July 1, 1977."

§ 122-56.6

1975 CUMULATIVE SUPPLEMENT

§ 122-58.2

§ 122-56.6. **Voluntary admission not admissible in involuntary proceeding.** — The fact that one has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1973, c. 1084.)

§ 122-56.7. **Judicial determination.** — (a) A hearing shall be held in district court in the county in which the treatment facility is located within 10 days of the day a minor or a person adjudicated non compos mentis is admitted to a treatment facility pursuant to G.S. 122-56.5.

(b) The court shall determine whether

(1) Such person is mentally ill or inebriate and

(2) Is in need of further treatment at the treatment facility.

(c) The initial hearing and all subsequent proceedings shall be governed by the involuntary commitment procedures of Chapter 122, Article 5A of the General Statutes. Provided that, in a case involving an indigent respondent located at a regional psychiatric facility for the care and treatment of the mentally ill and inebriate, special counsel authorized by G.S. 122-58.12 shall act as his counsel at the initial hearing. (1975, c. 839.)

§ 122-57: Repealed by Session Laws 1973, c. 1084.

Revision of Article. — See same catchline under § 122-56.1.

ARTICLE 5A.

Involuntary Commitment.

§ 122-58.1. **Declaration of policy.** — It is the policy of the State that no person shall be committed to a mental health facility unless he is mentally ill or an inebriate and imminently dangerous to himself or others; that a commitment will be accomplished under conditions that protect the dignity and constitutional rights of the person; and that committed persons will be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 726, s. 1; c. 1408, s. 1.)

Revision of Article. — Session Laws 1973, c. 1408, ratified April 12, 1974, and made effective 60 days after ratification, revised and rewrote this Article, substituting present §§ 122-58.1 through 122-58.18 for former §§ 122-58.1 through 122-58.8. No attempt has been made to point out the changes effected by the revision, but where appropriate, the historical citations to

the sections of the former Article have been added to corresponding sections in the Article as revised.

Applied in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Quoted in *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 122-58.2. **Definitions.** — As used in this Article:

- (1) The phrase "dangerous to himself" includes, but is not limited to, those mentally ill or inebriate persons who are unable to provide for their basic needs for food, clothing, or shelter;
- (2) The words "inebriety" and "mental illness" have the same meaning as they are given in G.S. 122-36; and
- (3) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, and State highway patrolman. (1973, c. 726, s. 1; c. 1408, s. 1.)

Cited in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

§ 122-58.3. Affidavit and petition before clerk or magistrate; custody order. — (a) Any person who has knowledge of a mentally ill or inebriate person who is imminently dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate of district court and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a qualified physician. The affidavit shall include the facts on which the affiant's opinion is based. The respondent must be found in or be a resident of the same county as the clerk or magistrate.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill or inebriate and imminently dangerous to himself or others, he shall issue an order to a law-enforcement officer to take the respondent into custody for examination by a qualified physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry, as soon as may be and in any manner deemed reliable, as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) An affiant who is a qualified physician may execute the oath to the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. (1973, c. 726, s. 1; c. 1408, s. 1.)

Physician Who Is Licensed Other Than in North Carolina and Who Is Practicing with Veterans Administration Is "Qualified Physician". — See opinion of Attorney General to Dr. N.P. Zarzar, Division of Mental Health Services, 43 N.C.A.G. 400 (1974), issued under this Article prior to its 1973 revision.

Right to trial by jury did not exist at common law in insanity proceedings and is thus not required under this section. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

The right to trial by jury guaranteed by North Carolina Const., Art. I, § 25, applies only to cases in which the prerogative existed at common law or by statute in existence at the time the Constitution was adopted. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975). Applied in In re Mostella, 25 N.C. App. 666, 215 S.E.2d 790 (1975).

§ 122-58.4. Duties of law-enforcement officer; examination by qualified physician. — (a) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer, within 24 hours after the order is signed, shall take the respondent into custody. Immediately upon assuming custody, and in any event within 48 hours, the officer shall take the respondent to a community mental health center for an examination by a qualified physician; if a qualified physician is not available in the community mental health center, he shall take the respondent to any qualified physician locally available. If a physician is not immediately available, the officer may temporarily detain the respondent in a community mental health facility, if one is available; if such a facility is not available, he may cause the detention of the respondent, under appropriate supervision, in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a regional mental health facility, but not in a jail or other penal facility.

(b) If the affiant who obtained the custody order is a qualified physician, the examination set forth in subsection (a) is not required. In this case, the law-enforcement officer shall take the respondent directly to a mental health facility described in subsection (c).

(c) The qualified physician shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. If the physician finds that the respondent is not mentally ill or an inebriate, or is not imminently dangerous to himself or others, the law-

enforcement officer shall release him, and the proceedings shall be terminated. If the physician finds that the respondent is mentally ill or an inebriate, and is imminently dangerous to himself or others, the law-enforcement officer shall take the respondent to a community mental health facility or public or private facility designated or licensed by the Division of Mental Health Services of the Department of Human Resources for temporary custody, observation, and treatment of mentally ill or inebriate persons pending a district court hearing. If there is no community mental health facility so designated, and if the respondent is indigent and unable to pay for his care at a private facility, the law-enforcement officer shall take the respondent to a regional psychiatric facility designated by the Division of Mental Health Services for custody and treatment of the mentally ill and inebriate, and immediately notify the clerk of superior court of his actions.

(d) The findings of the qualified physician and the facts on which they are based, shall be in writing, in all cases. A copy of the findings shall be transmitted to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.5. Duties of clerk of superior court. — Upon receipt of a qualified physician's finding that a respondent is mentally ill or an inebriate, and imminently dangerous to himself or others, the clerk of superior court shall, upon direction of a district court judge, assign counsel, if necessary, calendar the matter for hearing, and notify the respondent and counsel of the time and place of the hearing. Notice must be given at least 48 hours in advance, unless waived by counsel for the respondent. (1973, c. 1408, s. 1.) ✓

§ 122-58.6. Treatment and release pending hearing. — (a) Within 24 hours of arrival at a community or regional mental health facility described in G.S. 122-58.4(c), the respondent shall be examined by a qualified physician. If the qualified physician finds that the respondent is mentally ill or an inebriate, and is imminently dangerous to himself or others, he shall hold the respondent at the facility pending the district court hearing. If the qualified physician finds that the respondent is not mentally ill or inebriate, or is not imminently dangerous to himself or others, he shall release the respondent pending the district court hearing and so notify the clerk of superior court of the county from which the respondent was sent. Unless the respondent provides his own transportation, the law-enforcement officer shall return the respondent to the originating county. If a respondent, so released, fails, upon proper notification, to attend the hearing, and his presence is not waived by his counsel and the court, he may be taken into custody and returned to the releasing facility by any law-enforcement officer on order of the judge. Days the respondent is on release shall not be counted in computing the 10-day period in which the hearing must be held.

(b) The findings of the qualified physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be transmitted to the clerk of superior court by reliable and expeditious means.

(c) Pending the district court hearing, the qualified physician attending the respondent is authorized to administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.7. District court hearing. — (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon motion of the respondent's counsel, sufficiently in advance to avoid movement of the respondent, continuances of not more than five days each may be granted.

(b) The district attorney may represent the petitioner in cases of significant public interest.

(c) If the respondent is allegedly mentally ill, he shall be represented by counsel of his choice, or, if he is indigent within the meaning of G.S. 7A-450, or refuses to retain counsel if financially able to do so, by counsel appointed by the court. If the respondent is an alleged inebriate, he may be represented by counsel of his choice, or he may waive counsel, if the judge finds that he is sober and capable of making an informed decision, and that the waiver is voluntary. If the alleged inebriate does not waive counsel and is an indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(d) With the consent of the court, counsel may in writing waive the presence of the respondent.

(e) Certified copies of reports and findings of qualified physicians and medical records of the mental health facility are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(f) Hearings may be held in an appropriate room not used for treatment of patients at the mental health facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing shall not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge, a more suitable place is available.

(g) The hearing shall be closed to the public, unless the respondent requests otherwise.

(h) A copy of all documents admitted and, where applicable, a transcript of oral testimony considered shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the transcript shall be provided at State expense.

(i) To support a commitment order, the court is required to find, by clear, cogent, and convincing evidence, that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others. The court shall record the facts which support its findings. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "If the respondent is allegedly mentally ill, he" for "The respondent" at the beginning of the first sentence of subsection (c) and added the second and third sentences of subsection (c).

The second 1975 amendment rewrote subsection (b), which formerly provided that on order of the presiding judge, the solicitor (district attorney) should represent the petitioner.

Failure to Afford Right of Cross-Examination. — Where the record shows that examining physician's affidavit formed the basis of order of commitment, and since respondent was not afforded the right, guaranteed by statute, to cross-examine the witness/physician, the evidence was not sufficient to support

findings required and to support commitment. In re Benton, 26 N.C. App. 294, 215 S.E.2d 792 (1975).

Findings Prerequisite to Commitment. — Statutory mandate requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, as those words are defined in § 122-36; and second, that the respondent is imminently dangerous to himself or others. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Finding considered sufficient to show a determination by the court that respondent was dangerous to herself as defined in § 122-58.2(1) was not finding that the danger was imminent so as to justify commitment. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

CHAPTER 983 Session Laws—1975

—FOREIGN-TRADE ZONES

Sec. 131. From the appropriations made in this act to the Department of Natural and Economic Resources for the 1976-77 fiscal year, the department is authorized to expend the sum of twenty-five thousand dollars (\$25,000) for the purpose of enabling the department to coordinate a program for the establishment, operation, and maintenance of foreign trade zones as provided hereinafter.

Sec. 132. The General Statutes of North Carolina are amended by adding a new Chapter 55C to read as follows:

"CHAPTER 55C. FOREIGN TRADE ZONES.

"§ 55C-1. *Public corporations authorized to apply for privilege of establishing a foreign trade zone.*—Any public corporation of the State of North Carolina, as that term is hereinafter defined is hereby authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with an Act of Congress approved June 18, 1934, entitled, 'AN ACT TO PROVIDE FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF FOREIGN TRADE ZONES IN PORTS OF ENTRY OF THE UNITED STATES,' to expedite and encourage foreign commerce, and for other purposes.

"§ 55C-2. *Public corporation defined.*—The term 'public corporation' for the purposes of this Chapter, means the State of North Carolina or any political subdivision thereof, or any public agency of this State or any political subdivision thereof, or any public board, bureau, commission or authority created by the General Assembly.

"§ 55C-3. *Private corporations authorized to apply for privilege of establishing a foreign trade zone.*—Any private corporation hereafter organized under the laws of this State for the specific purpose of establishing, operating and maintaining a foreign trade zone in accordance with the Act of Congress referred to in G.S. 55C-1 is likewise authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the said Act of Congress.

"§ 55C-4. *Public or private corporation establishing foreign trade zone to be governed by federal law.*—Any public or private corporation authorized by this Chapter to make application for the privilege of establishing, operating, and maintaining said foreign trade zone, whose application is granted pursuant to the terms of the aforementioned Act of Congress is hereby authorized to establish such foreign trade zone and to operate and maintain the same subject to the conditions and restrictions of the said Act of Congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by said Act of Congress to carry out the provisions of such Act. Any other provision of law notwithstanding, property which is located in a foreign trade zone established pursuant to this chapter shall be subject to ad valorem taxes.

—CHANGE VENUE FOR SOME DISTRICT COURT HEARINGS

Sec. 133. Article 5A of Chapter 122 of the General Statutes is amended by adding a new section thereto following G.S. 122-58.7 to be numbered and to read as follows:

"§ 122-58.7A. *Venue of district court hearing when respondent held at regional facility pending hearing.*—(a) In all cases where the respondent is held at a regional mental health facility pending the district court hearing as provided in G.S. 122-58.6, unless the respondent through counsel objects to the

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venue, the hearing required by G.S. 122-58.7 shall be held in the county in which the facility is located.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court with whom the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122-58.5. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122-58.12."

—ECONOMIZE IN CRIMINAL PROCEDURE/REMOVE UNJUSTIFIED PAPERWORK IN THE ADMINISTRATION OF CRIMINAL PROCEDURE

Sec. 134. G.S. 15A-131(f) is amended to read as follows:

"(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance before the magistrate and prior to arraignment."

Sec. 135. G.S. 15A-141(3) is amended by deleting the following words:

" , or entering oral notice thereof in open court at the time of his initial appearance".

Sec. 136. G.S. 15A-301(a)(1) is amended to read as follows:

"(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk."

Sec. 137. G.S. 15A-301(d)(4) is amended by adding at the end thereof the following sentence:

"If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance."

Sec. 138. G.S. 15A-303(d) is amended by adding at the end thereof the following sentence:

"Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons."

Sec. 139. G.S. 15A-601(c) is amended by deleting the last two sentences and substituting in lieu thereof the following sentence:

"This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d)."

Sec. 140. G.S. 15A-601 is amended by adding a new subsection (d) to read as follows:

"(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding."

Sec. 141. G.S. 15A-511(a) is amended by adding a new subdivision (3) to read as follows:

"(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial

§ 122-58.8. Disposition. — (a) If the court finds that the respondent is not mentally ill or inebriate, or is not imminently dangerous to himself or others, he shall be discharged, and the facility in which he was last a patient so notified.

(b) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, and is imminently dangerous to himself or others, it may order treatment, inpatient or outpatient, for a period not in excess of 90 days, at a mental health facility, public or private, designated or licensed by the Division of Mental Health Services. Treatment at a private facility shall be at the expense of the respondent to the extent that such charges are not disposed of by contract between the county and the private facility.

(c) If the court orders outpatient treatment, and the respondent fails to adhere to the prescribed outpatient treatment program, on report of the failure by the chief of medical services of the treatment facility, the court, upon notice to the respondent and his counsel, may order a supplemental hearing, and further order inpatient treatment in a designated or licensed facility for a period of not more than 90 days running from the date of the order. (1973, c. 726, s. 1; c. 1408, s. 1.)

Applied in *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975); *In re Mostella*, 25 N.C. App. 666, 215 S.E.2d 790 (1975).

§ 122-58.9. Appeal. — The judgment of the district court is final. Appeal may be had to the Court of Appeals, on the record, as in civil cases. Appeal does not stay commitment, unless so ordered by the Court of Appeals. The Attorney General shall represent the petitioner on appeal. (1973, c. 726, s. 1; c. 1408, s. 1.)

Appeal is not moot solely because period of commitment has expired. *In re Appeal of Taylor*, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

Though respondent has been released, her appeal is not moot. So long as judgment of

involuntary commitment remains unchallenged, potentially adverse collateral consequences may continue. *In re Carter*, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

§ 122-58.10. Duty of assigned counsel; discharge. — Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, if any, or upon transfer of the respondent to a regional mental health facility, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a community mental health facility, assigned counsel remains responsible for his representation until discharged by order of district court, or until the respondent is unconditionally discharged from the community facility. (1973, c. 1408, s. 1.)

§ 122-58.11. Rehearings. — (a) Fifteen days before the end of the initial treatment period, if the chief of medical services of the inpatient facility determines that treatment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the judicial district in which the facility is located, shall calendar the rehearing, shall notify the respondent and his counsel of the time and place of the rehearing.

(b) Rehearings shall be held at the facility in which the respondent is receiving treatment. The judge shall be a judge of the district court of the judicial district in which the facility is located, or a district court judge temporarily assigned to that district.

(c) Rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing, including the right to appeal.

(d) If the court finds that the respondent is not in need of continued hospitalization, or of outpatient care, it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk of superior court of the county of original commitment and the facility from which the respondent is being discharged. If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others, and in need of continued hospitalization, or, in the alternative, of outpatient care, it may order hospitalization (or outpatient care, as the case may be) for an additional period not in excess of 180 days.

(e) Fifteen days before the end of the second commitment period, and annually thereafter, the chief of medical services of the facility shall review and evaluate the condition of each respondent, and if he determines that a respondent is in continued need of hospitalization or, in the alternative, of outpatient treatment, shall so notify the respondent, his counsel, and the clerk of superior court of the county in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. Any recommitment ordered shall be for only such period of time as continued treatment is deemed necessary by the chief of medical services of the treatment facility, but in no event longer than one year.

(f) There are no rehearings for outpatients. (1973, c. 726, s. 1; c. 1408, s. 1.)

Actual Notice of Rehearing Required Absent Waiver or Consent to Nonservice. — See opinion of Attorney General to Mr. J. Laird Jacob, Jr., Broughton Hospital, 44 N.C.A.G. 33 (1974).

§ 122-58.12. Counsel for indigents at rehearings. — (a) The senior regular resident superior court judge of a judicial district in which a regional psychiatric facility for the care and treatment of the mentally ill and inebriate is located shall appoint an attorney licensed to practice in North Carolina as special counsel for the mentally ill and inebriate who are indigent. Such special counsel shall serve at the pleasure of the appointing judge, shall not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys, as fixed by the Administrative Officer of the Courts. It shall be the duty of the special counsel to represent at rehearings under this Article all indigent respondents committed to the facility by a district court judge for mental illness or inebriety, and to represent all indigent respondents who, after a rehearing, appeal to the Court of Appeals. The initial determination of indigency shall be made by the special counsel in accordance with G.S. 7A-450(a), but is subject to redetermination by the presiding judge.

(b) The regional facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service, and necessary equipment and supplies for his office.

(c) In the event of a vacancy in the office of special counsel, or his incapacity, or a conflict of interest, counsel for indigents at rehearings may be assigned by a district judge of the district from among those members of the bar who maintain law offices within 20 miles of the regional facility. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants. (1973, c. 47, s. 2; c. 1408, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 47, s. 2, "district attorneys" has been substituted for "solicitors" in subsection (a) as enacted by Session Laws 1973, c. 1408, s. 1.

§ 122-58.13. Release and conditional release. — The chief of medical services of a public or private mental health facility shall discharge a committed respondent unconditionally at any time he determines that the patient is no longer in need of hospitalization. He may also release a respondent conditionally, for periods not in excess of 30 days, on specified medically appropriate conditions. Violation of the conditions is grounds for return to the releasing facility. A law-enforcement officer, on written request of the chief of medical services of the facility, shall take a conditional releasee into custody and return him to the facility. Notice of discharge and of conditional release shall be furnished the clerk of superior court of the county of commitment, and the county in which the facility is located. (1973, c. 726, s. 1; c. 1408, s. 1.)

§ 122-58.14. Transportation. — (a) Transportation of a respondent to or from a clerk or magistrate, a qualified physician, a community mental health facility, and a hearing shall be provided by the city or county, which said transportation may be by city- or county-owned vehicles, or by private ambulance by contract with the city or county. If the respondent is a resident of a city, the city has the duty to provide the transportation; if the respondent is a resident of a county, outside of city limits, the county has the duty to provide transportation; if a respondent resides outside of the county, the city (or county, as the case may be) in which he is taken into custody has the duty to provide transportation; but cities and counties may contract with each other to accomplish this function. Transportation to or from a regional hospital outside the county, for any purpose, is the responsibility of the county, pursuant to G.S. 122-42. If the respondent is not indigent, the city or county is entitled to recover the costs of transportation from the respondent. A respondent being discharged from a facility may elect to use his own transportation.

(b) To the extent feasible, law-enforcement officers transporting respondents shall dress in plain clothes, and shall travel in unmarked vehicles. (1973, c. 1408, s. 1.)

§ 122-58.15. Commitment of eligible veterans to Veterans Administration facility. — References in this Article to community or regional mental health facilities shall be deemed to include any facility operated by the Veterans Administration for inpatient care and treatment of mentally ill or inebriate veterans. Such a facility may be used for temporary detention pending a district court hearing, and for commitment subsequent to such a hearing. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility, and the availability of space therein, shall be determined in all cases prior to sending or committing a veteran-respondent thereto by filing with the court a certificate of eligibility from the Veterans Administration.

Rehearings for veteran-respondents committed to a Veterans Administration facility shall be held at the facility or at the county courthouse in the county in which the facility is located, and counsel for rehearings shall be assigned from among the members of the bar of the same county. (1973, c. 1408, s. 1.)

§ 122-58.16. Use of community and area mental health facilities. — Directors of community mental health facilities and area mental health programs shall submit for approval by the Division of Mental Health Services, plans consistent with this Article, for maximum utilization of community and area mental health facilities. Such plans shall be formulated after consultation with local court officials and the local medical society. (1973, c. 1408, s. 1.)

§ 122-58.17. Respondents committed under prior law. — Respondents committed to a mental health facility for a specific period of time prior to the effective date of this Article shall be deemed to have been committed, for the same period of time, under this Article. Respondents committed for an indefinite period of time shall be processed under this Article, with the initial district court hearing conducted within 30 days after the effective date of this Article. (1973, c. 1408, s. 1.)

Editor's Note. — Session Laws 1973, c. 1408, ratified April 12, 1974, was made effective 60 days after ratification.

§ 122-58.18. Special emergency procedure for violent persons. — When a person subject to commitment under the provisions of this Article is also violent and requires restraint, and delay in taking him to a qualified physician for examination would likely endanger life or property, a law-enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122-58.3, and in addition shall swear that the respondent is violent and requires restraint, and that delay in taking the respondent to a qualified physician for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, and that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a qualified physician for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a community or regional mental health facility designated for the custody and treatment of such persons under this Article.

Respondents received at a community or regional mental health facility under the provisions of this section shall be examined and processed thereafter in the same manner as all other respondents under this Article. (1973, c. 726, s. 1; c. 1408, s. 1.)

ARTICLE 6.

Emergency Hospitalization.

§ 122-59: Repealed by Session Laws 1973, c. 726, s. 2.

Repealed Section Was Unconstitutional. — The provisions of this section, before its repeal, did not comport with constitutional requirements of procedural due process, and it was unconstitutional on its face. In *re* Confinement of Hayes, 18 N.C. App. 560, 197 S.E.2d 582, appeal dismissed, 283 N.C. 753, 198 S.E.2d 729 (1973).

But Doctors Had Right to Rely on It. — While a party may not assert a right arising out

of a statute which has been declared unconstitutional, the principle does not strike down all undertakings made in reliance upon said statute. *Powell v. Duke Univ., Inc.*, 18 N.C. App. 736, 197 S.E.2d 910 (1973), holding that doctors were entitled to rely on provisions of section prior to time it was held unconstitutional.

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE MENTAL HEALTH STUDY COMMISSION.
3 The General Assembly of North Carolina enacts:
4 "Section 1. The Mental Health Study Commission established and
5 structured by 1973 General Assembly Resolution 80, 1973 Session Laws
6 Chapter 806, and 1975 Session Laws Chapter 185 is hereby revived and
7 authorized to continue in existence until July 1, 1979."
8 "Sec. 2. The continued Mental Health Study Commission shall
9 have all the powers and duties of the original Study Commission as they
10 are necessary to continue the original study, assist in the implementation
11 of the original Study Commission recommendations, and plan further
12 activity on the subject of the study."
13 "Sec. 3. Sec. 2. of the 1973 General Assembly Resolution 80
14 is hereby amended:
15 (1) by deleting the word 'eleven' in line 1 of that section
16 and substituting the word 'fifteen' therefor; (2) by deleting the word
17 'three' in line 2 of that section and substituting the word 'four'
18 therefor; (3) by deleting the word 'three' in line 5 of that section
19 and substituting the word 'four' therefor; (4) by deleting the phrase
20 'Mental Health Committee' in line 6 of that section and substituting
21 'Human Resources Committee' therefor; (5) by deleting the sentence
22 'The Governor shall appoint five members.' in line 7 of that section
23 and substituting the following sentences therefor: 'The Governor shall
24 appoint seven members. Two of the seven appointees shall be North

1 Carolina county commissioners taken from a list of four candidates pro-
2 vided by the North Carolina Association of County Commissioners. If,
3 after the Governor's request for such list, the above-named Association
4 fails to provide the list of candidates within a reasonable time, then
5 the Governor shall appoint any two county commissioners to the
6 Commission.'; and (6) by deleting the phrase 'Mental Health Committees'
7 in lines 7 and 8 of that section and substituting the phrase 'House
8 Mental Health Committee and the Senate Human Resources Committee' there-
9 for."

10 "Sec. 4. Members of the present Mental Health Study Commission
11 shall remain members of the continued Study Commission, but they shall
12 serve at the pleasure of the person holding the office authorized to
13 make the original appointment. Members of the General Assembly who are
14 not reelected shall not be disqualified from membership on the continued
15 Study Commission because they are no longer members of the General
16 Assembly, but the person holding the office authorized to make the
17 original appointment may replace them with new appointees."

18 "Sec. 5. Members and staff of the continued Mental Health
19 Study Commission shall receive the same compensation and expenses as
20 under the original authorization in the 1973 General Assembly Resolution
21 80, and the Department of Human Resources is hereby authorized to
22 reallocate fiscal resources under Budget Code 24081-1301 as the
23 funding source for the Mental Health Study Commission."

24 "Sec. 6. This act shall become effective on July 1, 1977."
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Resolutions—1973

S. R. 702

RESOLUTION 80

A JOINT RESOLUTION ESTABLISHING A COMMISSION TO STUDY AND EVALUATE THE EXISTING SYSTEM OF DELIVERY OF STATE HEALTH CARE FOR MENTAL ILLNESS, MENTAL RETARDATION, ALCOHOLISM AND RELATED HEALTH PROBLEMS AND TO RECOMMEND AN IMPROVED SYSTEM FOR THE DELIVERY OF SUCH CARE TO MEET THE SHORT AND LONG TERM NEEDS OF THE CITIZENS OF NORTH CAROLINA.

Whereas, the effective delivery of State health care for mental illness, mental retardation, alcoholism and related health problems is essential to the physical and mental health and economic well-being of the citizens of North Carolina;

Whereas, delivery of State health care for mental illness, mental retardation, alcoholism and related health problems is provided to the citizens of North Carolina under the general supervision of the State of North Carolina, with primary responsibility vested in the Department of Human Resources;

Whereas, the State of North Carolina has not conducted a review or evaluation of the comprehensive mental health plan to provide for a statewide network of facilities, services, and programs that was completed in 1965 and which was to be the basis of the present system of delivery of State health care for mental illness, mental retardation, alcoholism, and related health problems;

Whereas, a comprehensive evaluation of the system of delivery of State health care for mental illness, mental retardation, alcoholism and related health problems can result in recommendations which will meet the long and short term needs of the citizens of North Carolina more effectively at lower cost;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. Commission created. There is hereby created a Commission to study and evaluate the existing system of delivery of State health care for mental illness, mental retardation, alcoholism and related health problems and to recommend an improved system for the delivery of such care to meet the short and long term needs of the citizens of North Carolina.

Sec. 2. Appointment of members. The Commission shall consist of eleven members. The Speaker of the House of Representatives shall appoint three members from the House of Representatives, one of whom shall be the Chairman of the Mental Health Committee of the House of Representatives. The President of the Senate shall appoint three members from the Senate, one of whom shall be the Chairman of the Mental Health Committee of the Senate. The Governor shall appoint five members. All members of the Mental Health Committees of the General Assembly and the Secretary of Human Resources, or some person designated by him, shall be ex officio members of the Commission.

Sec. 3. Organization of the Commission. The Governor shall appoint the Chairman of the Commission. The Commission at its first meeting shall select two Vice-Chairmen from its membership. The Chairman shall preside at all meetings, and in his absence one of the Vice-Chairmen shall act as Chairman.

Sec. 4. Compensation and expenses of members of the Commission. Members and ex officio members of the Commission who are members of the General Assembly shall receive subsistence and travel allowance, at the rate set forth in G.S. 120-3.1(b) and (c). Members and ex officio members of the

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Commission who are not employees of the State of North Carolina and who are not members of the General Assembly shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5. Members and ex officio members of the Commission who are employees of the State of North Carolina shall receive travel allowances at the rate set forth in G.S. 138-6.

Sec. 5. Funding of the Commission. The Commission shall be funded from existing capital improvement appropriations made to the Department of Mental Health.

Sec. 6. Authority of the Commission to employ assistance. The Commission shall employ independent multi-skilled professional consulting services. Under the direction of the Commission, the consultants shall study and evaluate the existing system of delivery of State health care for mental illness, mental retardation, alcoholism and related health problems and shall make recommendations to the Commission for improvements in the delivery of such care to meet the long and short term needs of the citizens of North Carolina.

The Commission may employ consulting services in accordance with procedure adopted in conjunction with the Office of Purchase and Contract.

The Commission is further authorized to employ professional, technical and clerical assistance for itself and the consultants. The Commission may contract for such materials and services as are appropriate to the performance and execution of its duties.

With the consent of the Secretary or head of a State agency or department, staff personnel from the Department of Human Resources or any other State agency or department may be assigned or otherwise utilized to assist the Commission or the consultants. Upon the request of the Commission or the consultants, all State departments and agencies shall furnish the Commission or the consultants with any information in their possession.

Sec. 7. Additional authority of the Commission. Pursuant to its authority to study and evaluate the existing system of delivery of State health care for mental illness, mental retardation, alcoholism and related health problems and to recommend an improved system for the delivery of such care to meet the long and short term needs of the citizens of North Carolina, the Commission shall, in its discretion, be authorized

(1) to study and evaluate State, local and private delivery of health care for mental illness, mental retardation, alcoholism and related health problems;

(2) to study and evaluate social, legal, economic and other developments as they relate to the delivery of State health care for mental illness, mental retardation, alcoholism and related health problems;

(3) to study and evaluate State, local, and private administrative practices, management, and fiscal systems;

(4) to study and evaluate medical and supportive research programs;

(5) to study and evaluate any other subject which the Commission determines to be appropriate to its primary goal.

Sec. 8. Final report of findings and recommendations. The Commission shall prepare and deliver to the Governor, the Speaker of the House of Representatives, and the President of the Senate a report of its findings and recommendations on or before January 15, 1974, unless such time is extended by the Commission. Such report shall include the following: specific recommendations for improving the delivery of State health care for mental illness, mental retardation, alcoholism and related health problems; suggested

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means of implementing such recommendations; suggested means for continued reevaluation and improvement of the delivery of State health care for mental illness, mental retardation, alcoholism and related health problems; and any proposed legislation appropriate to carry out such recommendations.

Sec. 9. Interim reports and recommendations. The Commission may, at its discretion, make interim reports to the Governor, the members of the General Assembly, and the public.

Sec. 10. Termination of the Commission. The Commission shall terminate upon filing its final report with the Governor, the Speaker of the House of Representatives, and the President of the Senate.

Sec. 11. This resolution shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 3rd day of May, 1973.

H. R. 1300

RESOLUTION 81

A JOINT RESOLUTION HONORING THE FIFTH ANNUAL MARTIN LUTHER KING GAMES TO BE HELD IN DURHAM ON MAY 12.

Whereas, Dr. Martin Luther King, Jr., a citizen of the United States and the world, minister, educator, humanitarian and peacemaker died on April 4, 1968, in the prime of his life, a life dedicated to the service of his people, his country and the world; and

Whereas, Dr. Martin Luther King, Jr., expressed a dream that all men, regardless of race, creed or color, be given a fair chance in life, achieve success in their endeavors based on their individual efforts and merits, and be judged as equals; and

Whereas, the field of athletics provides a forum in which all participants are given a fair chance, all success is based on the individual efforts and achievements of the participants, and all are judged fairly and equally; and

Whereas, the City of Durham on May 12, 1973, is hosting an athletic event, a track and field competition, which is being held to commemorate the life and principles espoused by Dr. Martin Luther King, Jr., and in which participants from many states in this country and from many countries in the world will compete; and

Whereas, the General Assembly of North Carolina desires to express its warm approbation and support for this event and its purposes;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly recognizes and expresses its appreciation for the many years of service dedicated to mankind rendered by Dr. Martin Luther King, Jr., to his nation and the world.

Sec. 2. The General Assembly of North Carolina extends its warmest welcome to the participants in the Martin Luther King Games and wishes them good luck in the events in which they compete.

Sec. 3. The General Assembly of North Carolina extends its thanks and appreciation to the sponsors and officials of the Martin Luther King Games with the hope they will see fit to return the competition to North Carolina each year hence.

Sec. 4. A copy of this resolution shall be sent to the family of Dr. Martin Luther King, Jr.

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 OF THE GENERAL STATUTES TO
3 PROVIDE LEGAL REPRESENTATION FOR THE INTERESTS OF THE PETITIONER IN
4 INVOLUNTARY COMMITMENT PROCEEDINGS BY THE DISTRICT ATTORNEY OR A PRIVATE
5 ATTORNEY APPOINTED BY THE ADMINISTRATIVE OFFICE OF THE COURTS.

6
7 Whereas special counsel for the indigent respondent is pro-
8 vided by law in involuntary commitment proceedings, and;

9 Whereas neither the district attorney nor court appointed
10 counsel are required to represent the interests of the petitioner and
11 the community at large;

12 Whereas without representation for the petitioner and the
13 community at large in involuntary commitment proceedings the hearings
14 will not be balanced or truly adversarial in nature;

15 Whereas fundamental principles of traditional justice are
16 violated without representation for both sides in the involuntary
17 commitment issue; Now, therefore,

18
19 The General Assembly of North Carolina enacts:

20 "Section 1. G.S. 122-58.7(b) as the same appears in the 1975
21 Cumulative Supplement to Volume 3B of the General Statutes is hereby
22 rewritten to read as follows:

23 '(b) The district attorney shall represent the petitioner's
24 interest at all hearings, rehearings, and supplemental hearings

1 held pursuant to this Article. If the district attorney does
2 not have the staff to meet these responsibilities or if he
3 believes it to be an inappropriate duty, then he may file a
4 request with the Administrative Office of the Courts for
5 appointment of a qualified attorney in private practice to
6 perform these duties on a part-time or per diem basis. Such
7 request shall be supported by facts indicating the need for
8 assistance.'"

9 "Sec. 2. There is hereby appropriated from the General Fund
10 of the State of North Carolina to the Judicial Department, in addition
11 to all other appropriations, the sum of forty thousand dollars (\$40,000)
12 for the fiscal year 1977-78 and for fiscal year 1978-79 the sum of
13 forty thousand dollars (\$40,000)."

14 "Sec. 3. This act shall become effective July 1, 1977."

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§ 122-58.7. District court hearing. — (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon motion of the respondent's counsel, sufficiently in advance to avoid movement of the respondent, continuances of not more than five days each may be granted.

(b) The district attorney may represent the petitioner in cases of significant public interest.

(c) If the respondent is allegedly mentally ill, he shall be represented by counsel of his choice, or, if he is indigent within the meaning of G.S. 7A-450, or refuses to retain counsel if financially able to do so, by counsel appointed by the court. If the respondent is an alleged inebriate, he may be represented by counsel of his choice, or he may waive counsel, if the judge finds that he is sober and capable of making an informed decision, and that the waiver is voluntary. If the alleged inebriate does not waive counsel and is an indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(d) With the consent of the court, counsel may in writing waive the presence of the respondent.

(e) Certified copies of reports and findings of qualified physicians and medical records of the mental health facility are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(f) Hearings may be held in an appropriate room not used for treatment of patients at the mental health facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing shall not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge, a more suitable place is available.

(g) The hearing shall be closed to the public, unless the respondent requests otherwise.

(h) A copy of all documents admitted and, where applicable, a transcript of oral testimony considered shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the transcript shall be provided at State expense.

(i) To support a commitment order, the court is required to find, by clear, cogent, and convincing evidence, that the respondent is mentally ill or inebriate, and imminently dangerous to himself or others. The court shall record the facts which support its findings. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "If the respondent is allegedly mentally ill, he" for "The respondent" at the beginning of the first sentence of subsection (c) and added the second and third sentences of subsection (c).

The second 1975 amendment rewrote subsection (b), which formerly provided that on order of the presiding judge, the solicitor (district attorney) should represent the petitioner.

Failure to Afford Right of Cross-Examination. — Where the record shows that examining physician's affidavit formed the basis of order of commitment, and since respondent was not afforded the right, guaranteed by statute, to cross-examine the witness/physician, the evidence was not sufficient to support

findings required and to support commitment. In re Benton, 26 N.C. App. 294, 215 S.E.2d 792 (1975).

Findings Prerequisite to Commitment. — Statutory mandate requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, as those words are defined in § 122-36; and second, that the respondent is imminently dangerous to himself or others. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

Finding considered sufficient to show a determination by the court that respondent was dangerous to herself as defined in § 122-58.2(1) was not finding that the danger was imminent so as to justify commitment. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975).

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 5A OF CHAPTER 122 OF THE GENERAL STATUTES TO PROVIDE ADVANCE NOTICE OF HEARINGS AND REHEARINGS TO THE PETITIONER IN INVOLUNTARY COMMITMENTS.

The General Assembly of North Carolina enacts:

"Section 1. Article 5A of Chapter 122 of the General Statutes is hereby amended by adding a new section immediately following G.S. 122-58.18 to be numbered G.S. 122-58.18A and to read as follows:

'G.S. 122-58.18A. Advance notification to petitioner of involuntary commitment hearings and rehearings; waiver.--(a) The clerk of court shall notify the petitioner at least 48 hours in advance of all hearings and rehearings in which the district court might determine to commit the respondent, extend the respondent's commitment period, or discharge the respondent from the treatment facility.

(b) The petitioner may file a written waiver of his right to notice under this section with the clerk of court.'"

"Sec. 2. This act shall become effective July 1, 1977."

APPENDIX B

PRESENTATIONS BEFORE THE MENTAL HEALTH STUDY COMMISSION

November 4, 1976

Phillip J. Kirk, Jr., Secretary
Department of Human Resources

Phillip Nelson, M.D., Chairman, Mental Health Committee
North Carolina Medical Society

Ludie White, President-Elect
Howard Twiggs, Chairman, Public Affairs Committee
Joe Goodpasture, Executive Director
North Carolina Mental Health Association

Bob Riley, Institute of Government Staff
Task Force on Limited Guardianship
North Carolina Developmental Disabilities Council

Tony Mulvihill, Executive Director
United Health Services of North Carolina, Inc.

Herb Stout, President
Parents and Professionals for Handicapped Children

Brooke R. Johnson, Ph.D., Director
New River Area Mental Health Program

W. L. Kautzky, Assistant Director
Jack R. McCall, Ph.D., Chief, Psychological Services
Richard Kiel, Chief, Health Services
Charles Smith, M.D.
James Carter, M.D.
Division of Prisons, Department of Correction

Carey Fendley, Executive Director
Jean Fenner, President-Elect
North Carolina Association for Retarded Citizens

Pitt Dickey, Assistant Director for Administration
Dr. Elmer Davidson, Clinical Director, C.A. Dillon School
Division of Youth Services, Department of Human Resources

Michael A. Alvarez, M.S., Director
The Kids' Place, Forest City

Howard Dawkins, Chairman, Legislative Committee
North Carolina Association of Sheltered Workshops

Nell Barnes, President
North Carolina Association of Residences for the Retarded

Martha Lee Giovinetti, Chairman, Legislative Committee
North Carolina Association of Directors of Developmental Disabilities Centers

Ben Sauber, Director
The Advocate Program

Ben Monroe, Ph.D., President
North Carolina Area Mental Health Directors Association

Nicholas Stratas, M.D.
North Carolina Neuropsychiatric Association

Mike Crowell, Institute of Government Staff
Advisory Council on Alcoholism

George Bason, Chief District Judge, 10th Judicial District
North Carolina Association of District Court Judges

Ervin Funderburk, Jr., Director
Piedmont Area Mental Health Center

Ruby Milgrom
Governor's Advocacy Council on Children and Youth

Dr. Rachel Rawls, Chairperson, Legislative Committee
North Carolina Psychological Association

James R. Strickland, Attorney
Board of Commissioners of Onslow County

Bob Stallings
United Commercial Travelers

Burley Mitchell, District Attorney, Wake County
North Carolina District Attorneys Association

Judy Kornegay, Special Counsel
Dorothea Dix Hospital

APPENDIX C

RATIONALE FOR AREA MENTAL HEALTH REVISIONS

1. An Overview of the Proposed Area Mental Health Program Law

The proposed area mental health law represents a consolidation of the features of present State community mental health law and the considered recommendations of the Mental Health Study Commission. The declaration of policy in the new law reaffirms the existing proposition that the provision of mental health services requires the cooperation and joint financial assistance of county, State, and federal governments. Additionally, the proposed law provides that provision of community mental health services of the highest possible quality within available resources is an obligation of government in North Carolina to its citizens.

To implement the delivery of mental health care services to citizens in their communities, a system of governance is established which reflects the interconnection of responsibilities between county and State government. Provisions have also been incorporated into this proposed law to facilitate compliance with existing federal mental health grant laws and regulations. The Department of Human Resources is designated as the State mental health authority and is given the responsibility of administering minimum standards set by the Commission for Mental Health Services, administering federal funds to area mental health programs, and taking part in the establishment of area programs and the appointment of area mental health directors. The Commission for Mental Health Services sets standards for mental health services, takes part in the establishment of area mental health programs, specifies the geographic catchment areas for program operations, and hears appeals regarding standards affecting area mental health programs. The county board (in a single-county catchment area) or boards (in a multi-county catchment area) of commissioners establish the area mental health authority. The county commissioners appoint an area mental health board to be the governing body in the area where the services are to be rendered. To insure the accountability of the board members to the community, the board members serve at the pleasure of the appointing county commissioners. In turn, the area mental health board appoints, with the approval of the Department of Human Resources, an area mental health director who serves at the pleasure of the area board. The area director is responsible for the appointment and supervision of staff, compliance with standards of the Commission for Mental Health Services and implementation of the policies and programs of the area board. This system of governance is, therefore, interconnected according to the shared responsibilities of the State and county governments in the delivery of mental health services. This framework of governance and mutual responsibilities also aids in the coordination of resources, personnel, and facilities throughout the State.

The responsibilities of the area mental health authority, once established, are set forth in detail in the proposed law. In general, those duties include:



- (1) the development of an annual plan to provide a comprehensive program of mental health services for area residents;
- (2) the preparation of budget and audit reports for the county commissioners and the Department of Human Resources;
- (3) the establishment of technical and professional standards for mental health program personnel;
- (4) the specification of an area salary plan not to exceed limitations related to county salary plans;
- (5) the development of policies for collection of reimbursement from clients able to pay for the service (federal grant law);
- (6) the setting of limitations on the use of the facilities by area program employees for private practice;
- (7) the adoption of a policy setting forth circumstances under which employees may accept dual compensation and dual employment;
- (8) establishment of contracts for services with other public or private agencies for the provision of mental health services;
- (9) appealing on behalf of area mental health facilities who have been denied a license by the Department of Human Resources; and
- (10) the implementation of area mental health board policies.

The funding for the area mental health programs is generally provided by a combination of county, State, and federal monies. A base grant from the State to the area mental health authorities is made at the rate of \$500.00 per 1,000 population within the catchment area. Additional State funds are supplied in accordance with a matching formula set by the Department of Human Resources. Local matching funds include, but are not limited to, county funds, municipal funds, fees for services, gifts, and donations. State or federal money may not be considered when applying the matching formula.



2. New Provisions of the Proposed Area Mental Health Bill

- (1) The declaration of policy states that it is the obligation of Government in North Carolina to provide community mental health services of the highest possible quality within available resources to its citizens. The cooperation and financial assistance of county, State, and federal governments is required for the furnishing of such services. (G.S. 122-35.35)
- (2) Minimum standards are defined as basic levels of activity and basic levels of human and technical resources necessary for the implementation and operation of mental health programs. Present law does not define standards although State policy prescribes goal oriented standards. The proposed change would not prohibit the State from setting long-range standards but the change would mandate the development of minimum requirements for beginning and operating any area mental health program. (G.S. 122-35.36(9))
- (3) The definition of operating costs of an area mental health program is expanded to allow the payment of temporary legal counsel. This is done because many programs, especially in multiple county areas, have been unable to acquire assistance from either the State or county attorney. (G.S. 122-35.36(10))
- (4) An area mental health board is required, but it can be established and selected only by county commissioners with approval of the Department of Human Resources and the Commission for Mental Health Services (G.S. 122-35.39). Current law does not require area boards; however, local mental health authorities may be established, with the approval of the Department of Human Resources, not only by commissioners but by any governing body of a municipality with a population in excess of 25,000 or any independent community agency interested in mental health.
- (5) Area board members serve at the pleasure of the county commissioners by whom such appointments were made. (G.S. 122-35.39(b))
- (6) Area board membership can be expanded from the current requirements of 15 members to as many as 25 persons but only for the purpose of meeting requirements for receiving federal aid. (G.S. 122-35.40(a))
- (7) A procedure for the filling of a vacancy on the area board is specified. (G.S. 122-35.40(d))
- (8) Failure to comply with established standards is grounds for withholding State funds; however, areas may appeal for exceptions to any minimum standard if such standard is not in the best interest of the service needs in the area. (G.S. 122-35.41)



- (9) An annual service plan is required of each area in current law. The proposed law requires only a two year service projection while current law requires five years. Furthermore, changes in the plan during any fiscal year would be subject to approval by the Department of Human Resources. (G.S. 122-35.43(b))
- (10) A budget report and audit report is required and is to be provided to both Department of Human Resources and to county commissioners. (G.S. 122-35.44(a))
- (11) Reports of activities and services can be required but names of individual clients of the local program cannot be reported unless specifically required by State law or federal rules and regulations. (G.S. 122-35.44(b))
- (12) A "sunset" provision requires that the Department, at least biannually, must review all reports and eliminate any unnecessary reports. (G.S. 122-35.44(c))
- (13) State monies can be delayed if required reports are not filed. (G.S. 122-35.44(d))
- (14) Area boards must develop technical and professional standards for all mental health personnel under the supervision of the authority. (G.S. 122-35.45(a))
- (15) An area mental health director is appointed by an area board, and such director serves at the pleasure of the board. The area director is responsible for the appointment of staff. (G.S. 122-35.45(c))
- (16) Mental health services are the responsibility of a qualified professional with approved training and experience acceptable to the Department of Human Resources. (G.S. 122-35.45(d))
- (17) The salary plan for area employees is set by the area board but the plan cannot exceed the salary plan of any county in the area unless the board or boards of county commissioners agree to exceed established limits. (G.S. 122-35.46)
- (18) The area must make every reasonable effort to collect appropriate reimbursement in providing mental health services from persons able to pay and revenue from such collection shall be used for fiscal operation or capital improvement and not for reducing or replacing the budgeted commitment of local tax revenue. (G.S. 122-35.47)
- (19) In accordance with new federal law (Public Law 94-63, Sec. 206(c) (1) (L) (88)), limitations are placed on the collection of fees for private professional services when such services require the use of the resources and facilities of the area authority. (G.S. 122-35.48)
- (20) Areas are authorized to contract with public and private agencies for mental health services and are required to monitor the contract to assure that minimum standards are met. (G.S. 122-35.50)



- (21) Title to any real property purchased for mental health programs shall be held by the county where such property is located. Title to equipment is to be held by the area board. (G.S. 122-35.53)
- (22) Allocation of State matching funds is currently made on a formula basis as determined by the area's relative ability to fund mental health services. The proposed law would set the formula based upon the county's relative fiscal capacity to fund mental health. (G.S. 122-35.55)



3. A Summary and Analysis of the Major Effects of the
Proposed Area Legislation (Proposed Article 2F of Chapter 122)
on the Authority and Duties of County Commissioners as
Compared to Present Law (Articles 2A, 2C, and 2E of Chapter 122)

The following topical summary and analysis is intended to cover only the narrow issue of what major changes the new area mental health bill would cause, if enacted, in the area of the authority and duties of county commissioners. The bill affects many other areas in the field of mental health care service delivery, but these effects are not covered in this discussion. The form of this summary and analysis will be to contrast the present law affecting community mental health services (Articles 2A, 2C, and 2E of Chapter 122) with the proposed area mental health legislation (proposed Article 2F of Chapter 122).

To ease the task of reading this somewhat involved discussion, the following shorthand terms will be used.

	<u>SHORTHAND TERM</u>	<u>REFERS TO</u>
The main body of present State law affecting community mental health services is found in the following Articles of Chapter 122 of the General Statutes.	Article 2A -	LOCAL MENTAL HEALTH CLINICS
	Article 2C -	ESTABLISHMENT OF AREA MENTAL HEALTH PROGRAMS
	Article 2E -	LICENSING OF LOCAL MENTAL HEALTH FACILITIES
The area mental health bill consolidates the law affecting community mental health services into one Article	Article 2F -	AREA MENTAL HEALTH PROGRAMS

I. Participation in the Area Mental Health Program

- A. Present Law: It appears that a county in North Carolina may now choose whether to establish local mental health services or not. If a county decides to provide such services, it has two basic options. The first option is to allow the county commissioners to establish a "local mental health authority" in accordance with Article 2A. The second option is to establish an area mental health program in accordance with Article 2C. Regardless of which option is chosen, a license must be obtained from the State permitting operation of the program under Article 2E.

Note: Presently 95 counties in the State operate in Article 2C area programs; the remaining 5 counties operate Article 2A "local mental health authorities."



- B. Proposed Law: The proposed Article 2F requires that counties, through their county commissioners, establish an area mental health program. Article 2F repeals Articles 2A, 2C, and 2E, however many of the concepts of the repealed Articles are carried forward and are incorporated into proposed Article 2F.

II. Appointment of the Area Mental Health Board Members

- A. Present Law: If a county opted for an Article 2A mental health care system, then no area board is required. If a county or counties chose to participate in an Article 2C area program, then the county commissioners were required to appoint an area mental health board.* The area board members are appointed for a term of years by the county commissioners. There are no procedures specified in current law for the removal of area board members. In that case, according to an informal opinion rendered by the State Attorney General, "termination for no reason or at the will of the appointing authority is not permitted. However, under the common law, the power to remove a public officer from his office for reasonable and just cause is incident to the right to appoint to that office. This authority, though, cannot be exercised except upon notice to the individual and [an] [o]pportunity for a hearing as to the cause." (opinion from Rufus L. Edmisten, Attorney General, to Edward E. Hollowell, Esq., Attorney for Wake County Area Mental Health Board, dated December 16, 1976).
- B. Proposed Law: The proposed Article 2F significantly increases the authority of the county commissioners to remove one or all of the area board members. The language of the bill states that the area mental health board members "serve at the pleasure of" the county commissioners who made the original appointments. This language indicates that the notice, hearing, and good cause shown requirement of present law would no longer restrict the county commissioners in removing area board members.

III. County Commissioners Serving on the Area Mental Health Board

- A. Present Law: Presently, there must be at least one county commissioner from each county in the area. The area board must consist of 15 members. Eight of these members are specified by law and the group includes doctors, lawyers, nurses, etc. The remaining positions are appointed by county commissioners and, if they so choose, county commissioners may appoint county commissioners to fill those positions.

* Special legislative exceptions were made for single-county areas with a population of 275,000 or more (Guilford, Mecklenburg, and now Wake County). The board of county commissioners in these counties are allowed to designate themselves as an area board.



- B. Proposed Law: County commissioners may increase the size of the area mental health board from 15 to 25 members for the purpose of meeting requirements set by federal authorities as a condition to receiving federal aid.

IV. Reports by the Area Program to the County Commissioners

- A. Present Law: The area mental health programs are not expressly required to provide reports to the county commissioners.
- B. Proposed Law: On a periodic basis, each area mental health program shall provide the county commissioners (and others) with:
 - 1. A budget report which indicates receipt and expenditure for the total area mental health program according to a reporting format prescribed by the Department of Human Resources; and
 - 2. An audit report prepared by an independent certified public accounting firm.

V. Limitation on Salary Plans for Area Mental Health Program Employees

- A. Present Law: Salary plans are not mentioned in the existing law.
- B. Proposed Law: In a single-county area the salary plan set by the area mental health program may not exceed the county's salary plan. In a multiple county area, the area program salary plan may not exceed the highest paying salary plan of any county in that area. These limitations may be exceeded, but county commissioners must agree to any increase in area program salary plans.



4. Federal Law to Which the Bill Responds

The proposed area mental health law is designed to allow compliance with Public Law 94-63 passed by the 94th Congress on July 29, 1975. Specific provisions of Title II - Community Mental Health Centers (part of PL 94-63) are excerpted below.

Sec. 201 (c)(1)(A) The governing body of a community mental health center (other than a center described in subparagraph (B)) shall (i) be composed, where practicable, of individuals who reside in the center's catchment area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (ii) meet at least once a month, establish general policies for the center (including a schedule of hours during which services will be provided), approve the center's annual budget, and approve the selection of a director for the center. At least one-half of the members of such body shall be individuals who are not providers of health care.

(B) In the case of a community mental health center which before the date of enactment of the Community Mental Health Centers Amendments of 1975 was operated by a governmental agency and received a grant under section 220 (as in effect before such date), the requirements of subparagraph (A) shall not apply with respect to such center, but the governmental agency operating the center shall appoint a committee to advise it with respect to the operations of the center, which committee shall be composed of individuals who reside in the center's catchment area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

Sec. 206(c)(1)(J) such community mental health center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(K) such community mental health center (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments which discounts are adjusted on the basis of the patient's ability to pay; (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such approved schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (J) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph; and

(L) such community mental health center will adopt and enforce a policy (i) under which fees for the provision of mental health services through the center will be paid to the center, and (ii)



which prohibits health professionals who provide such services to patients through the center from providing such services to such patients except through the center.

Sec. 238. Each State health planning and development agency designated for a State under section 1521 of the Public Health Service Act shall, in consultation with that State's mental health authority, periodically review the catchment areas of the community mental health centers located in that State to (1) insure that the sizes of such areas are such that the services to be provided through the centers (including their satellites) serving the areas are available and accessible to the residents of the areas promptly, as appropriate, (2) insure that the boundaries of such areas conform, to the extent practicable, with relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (3) insure that the boundaries of such areas eliminate, to the extent possible, barriers to access to the services of the centers serving the areas, including barriers resulting from an area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.



5. Statement of Impact of No Revision in General Statutes

- (1) Disqualification from application for federal funds -- Public Law 94-63 (Sec. 201(c)) requires that all community programs which seek assistance after July, 1975 must have a citizen governing board for their mental health program. The governing board must be composed of persons, who as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area. The federal law does state, however, that those mental health programs which have been funded by the federal government prior to the 1975 law could use an advisory board instead of a governing board. Fourteen areas in North Carolina would be allowed to form such an advisory board.* Current State law, on the other hand, is not flexible enough to allow 29 other mental health programs to form governing boards which will meet requirement for application for federal funds.
- (2) Current programs in jeopardy of losing federal money -- Federal regulations do contain a provision which allowed 5 North Carolina programs to apply for funds in 1975 and 1976. Four have been approved and funded with federal funds in those programs exceeding \$1.4 million dollars. The fifth has been approved but funds are not currently available. The special provision of the federal law expires in July 1977 and unless the boards are able to reconstitute their make-up, federal funds could be withdrawn. The proposed area bill has been reviewed by federal officials in Atlanta and judged to be drafted in such a manner as to permit an area, wishing to do so, to comply with P.L. 94-63.
- (3) State monies available to local programs -- For areas which have citizen boards, there is a base grant from the State of \$500 per 1,000 population. There is also State matching money for the areas with the match ranging from 50-50 to 90-10 (State-local), based on a formula which takes into account a number of economic and social factors. For non-area programs, State allocations are made on the basis of two-thirds of the first \$30,000 of the approved budget and 50-50 for the remainder of the budget.

In order to provide the same level of services as similar areas, a non-area program or an area program with a population significantly less than 75,000 will need more State money as a result of ineligibility for federal funds. Such programs can require disproportionate State resources which can be used to insure more equitable distribution of services.

* Lists of those areas are found on page 110.



AREAS WHICH WOULD BE ALLOWED TO FORM ADVISORY BOARD

(Federal Grants to Mental Health Centers
Funded Prior to June 30, 1975 Under Old
Community Mental Health Centers Act)

Smoky Mountain Mental Health Center - Construction and Staffing
Blue Ridge Mental Health Center - Construction and Staffing
Mecklenburg Mental Health Center - Staffing and Construction
Guilford County Mental Health Center - Staffing
Alamance County Mental Health Center - Child Staffing, Staffing and
Construction
Orange-Person-Chatham Mental Health Center - Staffing and Child Staffing
Sandhills Mental Health Center - Staffing, Child Staffing and Construction
Southeastern Regional Mental Health Center - Staffing and Construction
Cumberland County Mental Health Center - Staffing and Construction
Johnston County Mental Health Center - Staffing and Construction
Wake County Mental Health Center - Child Staffing through Raleigh Public Schools
Staffing grant has run out
Wilson-Greene Mental Health Center - Staffing and Construction
Edgecombe-Nash Mental Health Center - Staffing, Construction and Child Staffing
Neuse Clinic - Construction and Staffing

AREAS IN JEOPARDY OF LOSING FEDERAL MONEY

(Centers Funded Under New
Community Mental Health Centers Act
Beginning July 1, 1975)

New River Mental Health Center - initial operations grant
Wayne County Mental Health Center - initial operations grant
Pitt County Mental Health Center - initial operations grant
Roanoke-Chowan Mental Health Center - initial operations grant
Gaston-Lincoln Mental Health Center - initial operations grant (approved,
unfunded)

